APPEAL NO. 041407
FILED AUGUST 3, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on May 19, 2004. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable repetitive trauma injury; (2) the date of injury (DOI) is _____; (3) the appellant (self-insured) is not relieved from liability under Section 409.002 because the claimant timely notified his employer of the injury pursuant to Section 409.001; and (4) the claimant had disability beginning September 13, 2003, and continuing through the date of hearing. The self-insured appeals these determinations on sufficiency of the evidence grounds and asserts that the hearing officer erred by admitting Claimant's Exhibit Nos. 7 and 8. The claimant did not file a response.

DECISION

Affirmed.

As stated above, the self-insured asserts that the hearing officer erred by admitting Claimant's Exhibit Nos. 7 and 8. The self-insured objected to the admission of these exhibits at the hearing, asserting that the claimant did not use due diligence in obtaining the records and that they were not exchanged within 15 days after the benefit review conference (BRC) as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). Upon further discussion, the self-insured conceded that portions of Claimant's Exhibit No. 8 "were exchanged at one of the two BRCs that we had. . . ." The hearing officer found that Claimant's Exhibit No. 7 and the remainder of Claimant's Exhibit No. 8 corresponded to treatment received after the BRC and were exchanged as soon as they were received from the doctors' offices. Upon review of the record, we cannot conclude that the hearing officer abused his discretion in admitting Claimant's Exhibit Nos. 7 and 8. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). Even assuming there was error in the admission Claimant's Exhibit Nos. 7 and 8, such error is not reversible in view of the claimant's testimony and the remaining documentary evidence supporting the hearing officer's decision. *See* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.- San Antonio 1981, no writ); Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the claimant's testimony as well as the documentary evidence, we cannot conclude that the

hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**FK**
**(ADDRESS)**
**(CITY), (STATE) (ZIP CODE)**.

_____
Edward Vilano
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Margaret L. Turner
Appeals Judge