

APPEAL NO. 041775
FILED AUGUST 26, 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 was held on June 28, 2004. The hearing officer determined that appellant/cross-respondent (claimant) did not sustain a compensable injury on _____, and that he did not have disability. Claimant appealed these adverse determinations on sufficiency grounds. Claimant also complains that the hearing officer abused his discretion in excluding the June 16, 2004, report of Dr. S. Respondent/cross-appellant (carrier) responded that the hearing officer did not err in determining that claimant did not sustain a compensable injury. Carrier appealed, contending that claimant did not have disability. The file does not contain a response to carrier's cross-appeal.

DECISION

We affirm.

Claimant contends the hearing officer abused his discretion in excluding the June 16, 2004, report of Dr. S. The hearing officer determined that the report was not timely exchanged after the April 20, 2004, benefit review conference (BRC). To obtain a reversal of a judgment based upon the hearing officer's abuse of discretion in admitting evidence, an appellant must first show that the admission was in fact an abuse of discretion, and, also, that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. See Texas Workers' Compensation Commission Appeal No. 012523, decided November 15, 2001. Because essentially the same evidence was otherwise admitted at the hearing, we perceive no reversible error in the exclusion of this report. We conclude that any error was not reasonably calculated to cause nor did it probably cause the rendition of an improper decision. Appeal No. 012523, *supra*.

Carrier has appealed and contended that claimant did not sustain any period of disability. Carrier prevailed on the disability issue and the hearing officer determined that claimant did not have disability. As carrier is not aggrieved by this determination and there is no reversible error.

We have reviewed claimant's assertions of error and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not 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).

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge