APPEAL NO. 041908
FILED SEPTEMBER 27, 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 July 6, 2004. The hearing officer resolved the disputed issues by deciding that the compensable injury of _____, does not include the cervical area and that the appellant (claimant) is not entitled to reimbursement of travel expenses for medical treatment at the direction of his treating doctor. The claimant appealed, disputing both the extent-of-injury and travel reimbursement determinations and asserts that the hearing officer erred in admitting respondent's (self-insured) Exhibit No. 19, a required medical examination report. The self-insured responded, urging affirmance of the disputed determinations. The self-insured contended that error, if any, in admission of the complained-of exhibit was not harmful to the claimant because the hearing officer indicated that he gave the exhibit no weight in reaching his determination of the disputed issues.

DECISION

Affirmed.

REIMBURSEMENT

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6) contains the requirements for reimbursement of travel expenses, one of which is that medical treatment for the compensable injury is not reasonably available within 20 miles of the injured employee's residence. The hearing officer found that the claimant failed to present evidence that appropriate medical care for his compensable injury is not available within 20 miles of his home, noting that the claimant failed to meet his burden of proof on the disputed issue. The hearing officer concluded that the claimant was not entitled to reimbursement of travel expenses for medical treatment at the direction of his treating doctor.

The Appeals Panel has stated that the question of whether the employee had demonstrated entitlement to reimbursement for travel expenses under Rule 134.6 was a question of fact for the hearing officer and that the claimant had the burden of proof on that issue. Texas Workers' Compensation Commission Appeal No. 000467, decided April 14, 2000. We have reviewed the complained-of determination and conclude that the hearing officer's determination that the claimant is not entitled to reimbursement for travel expenses for medical treatment at the direction of his treating doctor is 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).

EXTENT OF INJURY

The parties stipulated that the claimant sustained a compensable injury on _____. The hearing officer was not persuaded by the evidence presented that the claimant's compensable injury included the cervical area. The hearing officer specifically noted that a videotape in evidence, which showed the claimant mowing the lawn, demonstrated that the claimant exhibited full range of motion of his right shoulder and neck, and did not display any pain behavior or stiffness. Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain, *supra*. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying the standard of review outlined above, we find no reversible error.

EVIDENTIARY OBJECTION

Finally, we address the claimant's evidentiary objection. The claimant asserts that it was error for the hearing officer to admit Self-insured's Exhibit No. 19, a medical report based on a required medical examination dated June 29, 2004. We have frequently held that to obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion 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. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been held that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mut. Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We find no abuse of discretion in the hearing officer's admission of the complained-of document

over the claimant's relevancy objection. The claimant has failed to offer sufficient proof that the admission of the document amounted to reversible error.

We affirm the decision and order of the hearing officer.

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

U.S. CORPORATE SERVICES
800 BRAZOS STREET
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge