APPEAL NO. 041993
FILED SEPTEMBER 21, 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 July 26, 2004. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not include right side ulnar nerve/cubital tunnel syndrome.

The claimant appealed, principally on grounds that the hearing officer erred in excluding a retest by a referral doctor and more generally that textbook evidence supported the referral doctor's method of performing an EMG procedure. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant sustained a compensable injury on _____, when he fell several feet off a scaffold. The hearing officer commented that the mechanism of the injury is consistent with an injury to the right elbow. At issue is whether the right elbow injury includes right side ulnar nerve/cubital tunnel syndrome. The hearing officer, in his Background Information, recites the names and status of the various doctors the claimant saw and the doctors that did a record review. The hearing officer comments that the "medical evidence is mixed" and finds that the greater weight is given to Dr. S, a Texas Workers' Compensation Commission (Commission)-required medical examination (RME) doctor who did "not have an axe to grind in this case."

Dr. S, in his original report of August 21, 2003, stated that there was no objective pathology to substantiate the diagnosis of carpal tunnel syndrome. The Commission sent a letter dated November 13, 2003, requesting clarification whether Dr. S believed the claimant's injury included right side ulnar nerve/cubital tunnel syndrome. In a response dated November 18, 2003, Dr. S was critical of the way the referral doctor outlined "an electrodiagnostic report" and was of the opinion that the claimant's injury does not "include the right ulnar nerve (cubital tunnel syndrome)."

A benefit review conference was conducted on May 3, 2004, and in evidence are reports from three record review doctors (two reports are dated May 6, 2004, and one report is dated May 6, 2004), which support Dr. S's opinion. The claimant was retested by the referral doctor on the morning of July 26, 2004 (the date of the CCH), and the claimant sought to have the doctor's handwritten notes admitted at the CCH that afternoon. The hearing officer sustained the carrier's objection on lack of timely exchange ruling that there was no good cause that the report could not have been obtained earlier. We review evidentiary rulings on an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992.

See Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ) for the standard which might require a remand. We find no abuse of discretion in the hearing officer's ruling.

We have reviewed the complained-of determinations and conclude that the hearing officer's determination on the extent-of-injury issue is sufficiently supported by the evidence, namely Dr. S's reports, and that the hearing officer did not abuse his discretion in excluding the referral doctor's notes of a retest done the morning of the CCH and in finding no good cause. The hearing officer's determinations 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).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **EMPLOYERS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

HOWARD ORLA DUGGER
2505 NORTH PLANO ROAD, SUITE 2000
RICHARDSON, TEXAS 75082.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge