APPEAL NO. 042095
FILED SEPTEMBER 28, 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 29, 2004. The hearing officer determined that the respondent's (claimant) compensable injury of _____, does extend to and include reflex sympathetic dystrophy (RSD) of the right hand and right wrist. The appellant (self-insured) appealed, arguing that the hearing officer committed legal errors by failing to make findings: (1) that the claimant negated other potential causes of her RSD; (2) that the claimant had negated other potential ailments that have similar symptoms to RSD; and (3) that the claimant had proved her case to a reasonable medical probability. The self-insured also argued that the hearing officer erred in admitting a bone scan test which had not been exchanged until just prior to the hearing. The claimant urges affirmance.

DECISION

Affirmed.

The self-insured argues that the hearing officer erroneously admitted Claimant's Exhibit No. 11, over the self-insured's objection, despite the fact that it had not been exchanged until just before the hearing. The claimant told the hearing officer that she had just received the report the morning of the CCH. The exhibit was a bone scan report which appears to have been prepared on or about July 6, 2004. The hearing officer ruled that there was good cause for the untimely failure to exchange the report. The hearing officer's evidentiary rulings are reviewed using an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. 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* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). There was testimony in the record that the claimant's treating physician did not have the report on July 15, 2004, and the claimant did not pick up the report until July 29, 2004. We find no abuse of discretion in the hearing officer's application of the exchange of evidence rules and perceive no reversible error in the evidentiary ruling that the claimant had good cause for failing to timely exchange the report.

The issue of extent of injury presented a question of fact for the fact finder. 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 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). 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). 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. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer noted in the Background Information Section of the decision and order that the treating doctor credibly and persuasively testified that the RSD was diagnosed and resulted after surgery for her compensable carpal tunnel syndrome. The record also showed that the treating doctor had examined the claimant and taken a medical history. Based on the history, he had eliminated other possible causes. The self-insured presented no direct evidence disputing the treating doctor's testimony. Its assertions that the hearing officer failed to make certain findings are merely another way to argue that the evidence was insufficient to support the hearing officer's determination. Nothing in our review of the record reveals that the hearing officer's extent-of-injury determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse the determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.

For service by mail the address is:

JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Chris Cowan
Appeals Judge