

APPEAL NO. 022830  
FILED DECEMBER 27, 2002

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 October 10, 2002. The hearing officer determined that (1) the respondent (claimant) sustained a compensable injury on \_\_\_\_\_; and (2) claimant had disability beginning May 9, 2002, to July 1, 2002. The appellant (self-insured) appeals the determinations on sufficiency of the evidence grounds and asserts that the hearing officer erred in excluding the testimony of its witness, Mr. K. The claimant did not file a response.

DECISION

Affirmed.

We first address the self-insured's assertion that the hearing officer erred in excluding Mr. K's testimony. We review the admission or exclusion of evidence under an abuse-of-discretion standard. In determining whether the hearing officer abused her discretion, we will look to see if the decision maker acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 020257, decided March 19, 2002. Our review of the record reveals that there were no objections with regard to Mr. K being called as a witness. Direct examination of the witness concerned the circumstances under which the injury was reported. During cross-examination, the witness objected, on two occasions, to the relevance of the questions asked. The hearing officer admonished the witness to answer the questions and informed him that if he did not, his testimony would be excluded in its entirety. Rather than answer the question before him, the witness engaged in an exchange with the hearing officer concerning the tone of her admonishment. At that point the hearing officer dismissed the witness and excluded his testimony, over the self-insured's objection. We believe it would have been proper for the hearing officer to consider the testimony already offered by the self-insured's witness and decide the weight and credibility to be given to the testimony in view of the witness's perceived reluctance to answer questions. The hearing officer abused her discretion in excluding Mr. K's testimony in its entirety. However, in order to obtain a reversal based on such error, the self-insured must show that not only was the exclusion of the testimony error, but that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ); Atlantic Mut. Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.) (reversible error is not ordinarily shown in connection with an evidentiary ruling unless the case turns on the particular evidence excluded). Because the thrust of Mr. K's testimony was somewhat reiterated by another of the carrier's witnesses, the hearing officer's error in excluding Mr. K's testimony does not constitute reversible error.

The hearing officer did not err in reaching 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 evidence, we cannot conclude that the hearing officer's determination is 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 are affirmed.

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

**CR  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Edward Vilano  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Chris Cowan  
Appeals Judge

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Susan M. Kelley  
Appeals Judge