

APPEAL NO. 031056
FILED MAY 22, 2003

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 April 7, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appeals this decision and, additionally, asserts that the hearing officer erred in denying her motion to add an additional issue and in excluding one of her exhibits. The respondent (carrier) urges affirmance of the hearing officer's decision and order.

DECISION

Affirmed.

Regarding the exclusion of Claimant's Exhibit No. 8 for lack of timely exchange, we have frequently held that to obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the exclusion of evidence, an appellant must first show that the 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 Mutual Insurance Company v. Middleman*, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We perceive no abuse of discretion in the hearing officer's application of the exchange of evidence rules, and further note that it is not evident how the exclusion of the exhibit was reasonably calculated to cause and probably did cause the rendition of an improper judgment.

The claimant argues that the hearing officer erred in denying her request to add an additional issue. The evidence reflects that a benefit review conference was held on February 14, 2003, and the request to add an additional issue was made on March 7, 2003. The hearing officer denied the written request on March 10, 2003. At the hearing, the claimant again requested that the hearing officer add the issue, the carrier objected to adding the issue, and the hearing officer reiterated that he declined to add the issue, noting that no good cause had been shown. Neither in her written request to add the issue, nor at the hearing did the claimant advance any good cause argument or evidence to add the issue as is required under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7(e) (Rule 142.7(e)). As such, we cannot agree that the hearing officer erred in failing to add the issue. With regard to the claimant's complaint about the ombudsman who assisted the claimant prior to the hearing and, specifically, that ombudsman's role in requesting the additional issue, we note that ombudsmen are

available only to assist claimants and it is the claimant who remains responsible for the proper and adequate presentation of her case.

The hearing officer determined that the claimant did not sustain a compensable injury and did not have disability. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and it is for the hearing officer to resolve such conflicts and inconsistencies in the evidence as were present in this case (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find it to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

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.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge