APPEAL NO. 92326

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp.1992). On June 4, 1992, (hearing officer) conducted a contested case hearing to decide whether claimant, appellant herein, had injured her back at the time she injured her knee. The hearing officer ruled that appellant did not injure her back at work on (date of injury). Appellant asserts that her back was injured at that time although not treated until several months thereafter.

DECISION

Finding that the decision is sufficiently supported by evidence of record, we affirm.

Appellant worked at (employer) for approximately two and one-half years in customer service. On (date of injury), she slipped on a step and fell, striking her knee and landing with her left leg under her. She was immediately taken to (Hospital). On June 7, 1991, she filled out a report (Carrier Exhibit 3) stating that the accident occurred on (date), that she slid with her right foot, and that her left knee bent and hit a brick step. She did not say that she had hurt her back in any way.

Appellant has been treated by several doctors. The first to treat her, whose records were made a part of the record of the hearing, was (Dr. G). In a "Physician's Report" dated June 13, 1991, he states that he treated appellant on (date) and June 13th, at which time he referred her to (Dr. W). He relates the slip and fall episode and describes the injury as a severe sprain to the left knee and ankle. Handwritten notes made on those dates, which appear to be signed by Dr. G, are consistent with the report and list only the knee and ankle as injuries.

Upon her referral to Dr. W, appellant actually saw (Dr. B), an associate of Dr. W's in the months of June and July. Dr. W's first entry in the records admitted at the hearing is contained in a letter to the respondent dated August 9, 1991, in which Dr. W discusses surgery of appellant's knee. Dr. W writes again on September 4, 1991, of her need for surgery of the ankle and knee; thereafter in a letter dated December 18, 1991, Dr. W first mentions a low back injury. Previously, on September 25, 1991, (Dr. C), an associate of Dr. W, ordered a lumbar MRI without recording any complaint of pain or injury in that area; that MRI was normal. We note that Dr. W had referred appellant to (Dr. A) for a presurgical work-up and that Dr. A's report in September 1991 contained extensive reference to past and present medical problems but no reference to a back injury. Dr. B, in his June and July entries, made no reference to any back problem or injury.

In addition to the records of several physicians, physical therapy records were also introduced and show that on December 30, 1991 appellant was first noted to have "some pain to the low back." Medical records dated in 1992 reflect more entries referencing back problems but do not state a cause other than the statement on April 1, 1992 by Dr. W "I believe that the back symptoms are related to the industrial accident," without any further

explanation. In the appeal, appellant attached what purports to be a first report of injury dated (date), which was not admitted at the hearing because it was not part of the commission file and had not been exchanged with or seen by respondent's counsel. No issue is taken on appeal with the decision at the hearing against admission of this report. In addition, a consultation by (Dr. L) dated May 13, 1992, an emergency room instruction sheet from (Hospital), and a report of thermography dated December 4, 1991, were also attached and these had not been offered at the hearing.

The Appeals Panel considers only the record, the request for review and the response. Article 8308-6.42(a) of the 1989 Act. There is no assertion that the hearing officer erred in not admitting the purported report of injury and no showing that with due diligence the other documents would not have been available at the hearing. While the Appeals Panel does not consider a "motion for new trial," it does look to the criteria for such in considering whether an order of remand is appropriate. In addition to no showing of due diligence, there is no indication that the documents came to the attention of appellant after the hearing, that they are not cumulative of other evidence, and that they are so material as to probably produce a different result. *See* Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). The documents attached to the appeal will not be considered.

The hearing officer is the sole judge of weight and credibility of the evidence. Article 8308-6.34(e) of the 1989 Act. There was no dispute that a compensable injury to the knee took place on (date of injury); the only issue was whether appellant's back was injured in that fall. The hearing officer, as trier of fact, is not required to accept the testimony of appellant as an interested witness. Presley v. Royal Indem. Ins. Co., 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). She could accept part of appellant's testimony but resolve the conflict, between what appellant states her injury to be and what is reflected consistently in medical records over a period of months, against her. *See generally*, Sifuentes v. TEIA, 754 S.W.2d 784 (Tex. App.-Dallas 1988, no writ). The hearing officer could conclude that appellant does have an injury of the back but that it did not happen at the time and manner alleged. *See* Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ).

There was sufficient evidence of record for the hearing officer to find that appellant did not injure her back on (date of injury), while at work. The decision is affirmed.

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Joe Sebesta
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge