APPEAL NO. 93922

On September 8, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The issue determined at the contested case hearing was whether claimant had sustained an injury in a forklift collision on (date of injury), that extended into her left wrist, neck, right elbow, and right ankle, while employed by, Texas, location (employer). The hearing officer determined that the claimant sustained these extended injuries. The hearing officer ordered that applicable temporary income benefits (TIBS) and medical benefits be paid in accordance with her decision.

The carrier has appealed, arguing that the evidence was insufficient to prove that claimant's accident caused any injuries except for her left knee. As part of its argument, the carrier also argues that claimant did not give notice to her employer within thirty days after the accident. Carrier's appeal includes exhibits, some of which had not been tendered into evidence at the contested case hearing. The carrier filed also a supplemental appeal and exhibit, untimely. The claimant responds by refuting carrier's specific points about the evidence, and responds also that the employer had actual knowledge of claimant's injury.

DECISION

We affirm the hearing officer's decision.

Initially, we note that the issues reported as unresolved from the benefit review conference are the sole ones which the hearing officer may consider, absent agreement of the parties to add other issues. Section 410.151(b). There was no issue regarding timely notice that was properly before the hearing officer; therefore, whether notice was made timely or whether exceptions to notice exist in the facts of this case was not before the hearing officer and is not ripe for consideration by the Appeals Panel.

Further, we have in the past stated many times that additional evidence presented on appeal, and not presented at the hearing, will not be considered by the Appeals Panel. Texas Workers' Compensation Commission Appeal No. 92111, decided May 6, 1992. There was no explanation as to why documents in existence at the time of the contested case hearing were not timely produced. Our review of evidence in this case is limited to the record developed at the contested case hearing. *See* Section 410.203.

The claimant testified that on the date of her injury, (date of injury), she was driving a forklift which was involved in a collision with another forklift. During the collision, claimant braced herself with her right hand and leg. The other forklift slid 20 feet over a greasy area before colliding with her. Claimant hit her left knee against the forklift dashboard, and was sore all over for several days. Claimant sought immediate treatment from the plant nurse for her knee, the day of the accident. Thereafter, she decided to see her own doctor. Claimant said she did not seek to assert a workers' compensation claim for three major reasons: her husband was a manager at another location for the employer and she understood that the company frowned on filing of workers' compensation claims and was concerned about the effect on his position; she had applied for a supervisory position and

did not want to jeopardize her chances; and she thought that she could get well on her own. However, although her elbow injury resolved, her other injuries got worse and became more painful. Claimant was told in February 1992 that she did not get the supervisory position.

On November 21, 1991, according to claimant's exhibits, she saw Dr S. who treated her for a left knee contusion. Thereafter, she was treated by (Dr. MC); his notes reflect treatment for occipital neuritis in December 1991; for that condition and back pain in January 1992; and on April 6, 1992 for right ankle, right elbow left wrist and cervical spine. For this April visit, Dr. MC's notes state that claimant is having the symptoms of osteoarthritis. That same day, a sedimentation rate test was taken of claimant which was within normal limits for her gender. Claimant consulted with (Dr. C) in March 1992 for her knee; according to his June 4, 1992, letter she returned with complaints also involving her neck, right ankle, and left wrist. Dr. C noted that x-rays of these areas were negative, and postulated that she had ligamentous injuries and needed to be off work for a while. In a subsequent August 7, 1992 letter, Dr. C recounted the history of claimant's injuries, and stated that her knee injury alone would have been enough to keep her off work for the period he took her off.[1] Claimant had arthroscopy of her knee on July 14, 1992. Dr. C noted that claimant had an MRI of the cervical spine which was negative.

Claimant was certified as having reached maximum medical improvement (MMI) by (Dr. P), who examined claimant on November 23, 1992. His four page report makes it perfectly clear that he considered, as part of his examination, claimant's complaints about her neck, her elbow, her left wrist, and her right ankle, as well as her left knee. X-rays of all of these body areas were considered by him in arriving at his assessment. He essentially diagnosed strain for affected body parts except for claimant's knee. Dr. P opined that claimant had reached MMI, and expressly discussed whether any permanent impairment resulted from such injuries. Dr. P concluded that the only permanent impairment related to her lower left extremity. Dr. P certified, on a TWCC-69 Report of Medical Evaluation, that claimant reached MMI on November 23, 1992 with a four percent whole body impairment.

The plant nurse, (Ms. JP), testified that claimant sought treatment from her for her knee the day of the accident, and indicated then to her that she did not wish to pursue a workers' compensation claim. Ms. JP stated that she first knew claimant was claiming other injuries in June 1992.

The Loss Prevention Manager for employer, (Mr. C), testified that the filing of a workers' compensation claim by an employee or a spouse (even a fraudulent one) would not adversely impact anyone's employment or advancement.

[1]Carrier did not dispute the compensability of the left knee. It would seem that this opinion would sufficiently support an award of temporary income benefits for periods of disability prior to maximum medical improvement, separate and apart from the extended injuries.

The claimant stated that she had no other accident after (date of injury), on or off the job, which could have caused her injuries. Claimant agreed that she had not informed Ms. JP about injuries other than her left knee, and that she did not file a workers' compensation claim until June 1992. Claimant did not miss time from work for her injuries until around the time her claim was filed.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). A claimant's testimony alone is sufficient to establish that an injury has occurred. Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394 (Tex. 1989). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The hearing officer expressly commented upon claimant's credibility and we see no reason to set this aside, most especially given the evidence that a doctor apparently solicited by the carrier in this case, Dr. P, considered claimant's injuries in addition to her left knee as part of his certification of MMI and impairment.[2] The hearing officer had evidence before her to weigh concerning claimant's delayed filing of a claim, as well as the reasons therefore.

The hearing officer's determination that claimant's compensable injury extended to her neck, elbow, wrist and ankle occurred is sufficiently supported by the record, and we affirm.

Susan M. Kelley
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Gary L. Kilgore
Appeals Judge

[2]Although the hearing officer's order appears to order prospective TIBS, we would observe that entitlement to these benefits ends upon a finding of MMI. Section 408.101(a).