

APPEAL NO. 000925

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 March 24, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. Claimant appealed these determinations on sufficiency grounds. The file does not contain a response from respondent (carrier).

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she did not sustain a compensable injury and that she did not have disability. Claimant points to evidence she contends supports her claim and complains of the hearing officer's determinations regarding credibility. The hearing officer summarized and discussed the facts in her decision and order. Briefly, claimant testified that she injured her neck and left shoulder lifting an audit bag at work on _____. Claimant did not report an injury for several days, but called in sick, stating that she was ill with a headache. Claimant's coworker stated that claimant did not appear injured on the day in question.

The applicable law regarding injury and disability issues and our standard of review are set forth in Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992; Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); and Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The matters claimant raises in her brief involved credibility and fact issues, which the hearing officer resolved. The hearing officer stated that claimant's testimony was not persuasive and that claimant did not meet her burden to prove she sustained a compensable cervical and left shoulder injury lifting her audit bag. Claimant has asked the Appeals Panel to review the evidence that she offered at the CCH regarding whether she sustained an injury at work. However, the Appeals Panel cannot decide whether the evidence that claimant offered is credible because the hearing officer is the sole judge of the credibility of the evidence. The hearing officer decided what evidence she believed regarding the issues. The hearing officer's determination that claimant did not sustain a compensable injury is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain. Because claimant did not have a compensable injury, she did not have disability. A claimant must have a compensable injury in order to have disability.

We note that claimant defined certain words in her brief, citing a dictionary. However, the 1989 Act, the statute we apply, contains a section with definitions that the Appeals Panel uses in applying the 1989 Act. The definitions cited by claimant do not

change the fact that the hearing officer determined that claimant did not meet her burden to prove she was injured, and that this case is not reversible, given the Appeals Panel's standard of review.

We further note that documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether the evidence came to the party's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We conclude that the attachments to claimant's appeal, which were offered for the first time on appeal, do not meet the requirements of newly discovered evidence necessary to warrant a remand. See Appeal No. 93111.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge