APPEAL NO. 001568

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 June 14, 2000. The hearing officer determined that the appellant/cross-respondent (claimant) sustained a compensable injury to his right knee and left ankle on _____, but has not had disability. The claimant appealed, contending that the evidence shows that he had disability. Claimant also complains about the admission and exclusion of certain evidence and attaches new evidence to his brief. The respondent/cross-appellant (carrier) responded that the hearing officer did not err in making his disability determination. Carrier filed a cross-appeal challenging the injury determination on sufficiency grounds. Claimant responded that the evidence shows that he did sustain a compensable right knee and left ankle injury.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he did not have disability due to his _____, injury. Claimant claimed disability from January 17, 2000, and continuing. Claimant asserts that he has soreness and swelling, that he cannot walk properly, and that his treating doctor, Dr. B, has not released him to return to work.

The hearing officer summarized the evidence in the decision and order. Whether claimant had disability was a fact issue for the hearing officer. The hearing officer was the sole judge of the credibility of the evidence. Claimant's assertions concern credibility determinations that are the sole province of the hearing officer. The hearing officer was not required to believe the medical evidence from claimant's doctor regarding whether claimant had disability. The hearing officer could have chosen to credit the evidence from claimant that he would have continued to work had his employment not been terminated. We note that claimant complains that he was "disabled" while working from February 17 through February 22, 2000. However, we note that the determination that claimant did not have disability did not mean that claimant did not have an injury or that he did not need treatment. The focus was on the 1989 Act's definition of disability and whether claimant was unable, because of his compensable injury, to obtain and retain employment at wages equivalent to his preinjury wage. Section 401.011(16). We will not substitute our judgment for the hearing officer's because his disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.*

Claimant next contends that the hearing officer abused his discretion in permitting carrier to question him about a prior injury to the other knee. We note that claimant did object regarding relevance, but he did not do so until after he had already answered carrier's questions. Therefore, any error was waived. Further, the hearing officer could

have properly considered the evidence to be relevant to the issue of credibility. Claimant also complains that he was not given an opportunity to controvert testimony given by Mr. M. However, the record does not reflect that the hearing officer refused to permit rebuttal testimony.

Claimant attached new evidence to his brief. Documents submitted for the first time on appeal are generally not considered unless they constitute admissible newly discovered evidence. Claimant did not explain why he was unable to obtain these documents at an earlier time. We conclude that the attachments to claimant's appeal do not meet the requirements of newly discovered evidence necessary to warrant a remand. Having reviewed the documents, we conclude that their admission on remand most likely would not have resulted in a different decision. 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).

Carrier contends the hearing officer erred in determining that claimant sustained a compensable injury on _____. All of carrier's assertions concern credibility, which is the sole province of the hearing officer. We will not substitute our judgment for that of the hearing officer because his injury determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.*

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge