

APPEAL NO. 002513

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 convened on September 18, 2000, and closed on September 22, 2000. The issues at the CCH were whether the appellant (claimant) had sustained a compensable injury on _____. The hearing officer found that the claimant had not. The claimant appeals, asserting in essence that the hearing officer's decision was against the great weight and preponderance of the evidence. The respondent (self-insured) responded, asserting that the statements and documents attached to the claimant's appeal which were not offered into evidence at the hearing should be disregarded by the Appeals Panel, that the hearing officer's decision was correct, and that the decision should be affirmed.

DECISION

Affirmed.

We note that the claimant has made certain statements and provided certain documents with his appeal that are not contained in the record. We do not normally consider new evidence for the first time on appeal. We may, in very limited circumstances, remand a case when new evidence is presented if that evidence came to the party's knowledge after the CCH, is not cumulative of the evidence presented, was not through lack of diligence that the evidence was not presented at the CCH for the hearing officer to consider, and if the evidence is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. In this case, there is no indication that this evidence could not have been secured prior to the CCH or that it is so material that it would probably have produced a different result. We decline to consider the evidence submitted by the claimant for the first time on appeal. See Texas Workers' Compensation Commission Appeal No. 992873, decided February 4, 2000.

The claimant testified that he sustained an injury to his left shoulder on _____, when an extension ladder that he was attempting to move was caught by the wind and caused the claimant to almost lose his balance. The claimant testified that as he attempted to maintain his balance, he felt discomfort in his low back and shoulder.

The self-insured presented evidence that the claimant continued to work and also continued to lift weights at the self-insured's field house until after the claimant quit working on _____, to undergo knee surgery for an unrelated injury. The first report of the alleged shoulder injury occurred on _____, after the claimant had been examined by Dr. J, a doctor recommended by the claimant's attorney.

There is no dispute that an injury to the left shoulder exists. The hearing officer found that the claimant did not sustain the injury in the course and scope of employment. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility

of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. The hearing officer's determination that the injury did not occur in the course and scope of the claimant's employment is supported by the evidence.

The hearing officer's decision and order are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge