

APPEAL NO. 011031
FILED JUNE 21, 2001

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 April 11, 2001. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) compensable injury of _____, does not extend to the claimant's herniated discs at C5-6, L3-4, and L5-S1, and that the claimant has not had disability resulting from the compensable injury sustained on _____. The claimant appealed and the respondent (carrier) responded. The claimant's initial appeal, which was received by the Texas Workers' Compensation Commission (Commission) on May 11, 2001, was timely filed with the Commission and shall be considered; however, the claimant's "Request for Consideration of New Evidence," which was faxed to the Commission on May 25, 2001, was not filed within the 15-day time period for filing an appeal and will not be considered. Section 410.202(a); Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3.

DECISION

The hearing officer's decision is affirmed.

The hearing officer was presented with conflicting evidence on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. The parties stipulated that the claimant sustained a compensable injury on _____, when she slipped and fell at work. With regard to the issue of the extent of the claimant's injury, the hearing officer found that on _____, the claimant injured her neck and elbow, but did not injure her low back; that the claimant did not establish that the cervical injury extended to the problems at C5-6, which were first seen on x-rays in 1993; and that there was insufficient evidence that the preexisting condition was aggravated. The hearing officer concluded that the compensable injury of _____, does not extend to the claimant's herniated discs at C5-6, L3-4, and L5-S1. With regard to the disability issue, the hearing officer found that, due to the work injury, the claimant was not unable to obtain and retain employment at wages equivalent to the claimant's preinjury wage from _____, through the date of the CCH, and concluded that the claimant has not had disability resulting from the injury sustained on _____. The hearing officer's determinations are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge