

APPEAL NO. 011454
FILED JULY 31, 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 June 6, 2001. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to the claimant's right knee. The claimant appealed and the respondent (carrier) responded.

DECISION

Affirmed.

We first note that in the appeal there is a medical report from Dr. M dated June 26, 2001, which was mailed to the Texas Workers' Compensation Commission by Dr. M on June 28, 2001, addressing the issue of whether the claimant's injury extends to her right knee. This letter was sent separate from the claimant's appeal and it is not clear if it was intended to be part of the claimant's appeal. However, we will not consider this document in reviewing the claimant's appeal. First, we will not generally consider evidence not submitted into the record, and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that case be remanded for further consideration, we consider whether it came to the appellant'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). While the document in this case was clearly created after the CCH, it references testing and records from 1999 and 2000 as being the basis for the opinion and there is no showing why with due diligence this document could not have been obtained prior to the CCH.

The hearing officer did not err in determining that the claimant's compensable injury of _____, did not extend to and include her right knee. The claimant had the burden to prove that she sustained damage or harm to the physical structure of the body, which arose out of and in the course and scope of her employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. There was conflicting evidence presented with regard to this issue.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We cannot conclude that the hearing officer's determination was so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986)

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Panel

Michael B. McShane
Appeals Judge