APPEAL NO. 012525
FILED DECEMBER 11, 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 was held on September 18, 2001. With respect to the single issue before her, the hearing officer determined that the appellant's (claimant) _____, compensable injury does not extend to and include a cervical injury. In her appeal, the claimant essentially argues that the hearing officer's extent-of-injury determination is against the great weight of the evidence. The claimant also attaches evidence to her appeal, which was not admitted at the hearing. In its response to the claimant's appeal, the respondent (self-insured) urges affirmance.

DECISION

Affirmed, as modified.

Initially, we address the claimant's assertion that the hearing officer erred in identifying the date of injury as _____. The parties stipulated that the date of the claimant's compensable injury was _____. Thus, it is apparent that the hearing officer consistently made a clerical error in referring to the date of injury in the decision. As such, each reference to the date of injury as _____, in the decision is modified to correctly state the date of injury of _____.

The hearing officer did not err in determining that the claimant's compensable injury does not extend to a cervical injury. That issue presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence on the issue of the nature and extent of the claimant's compensable injury. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer's determination that the claimant's compensable injury does not extend to the cervical spine is not so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant attached two letters from her treating doctor that were not admitted in evidence at the hearing. Generally, we will not consider evidence that was not submitted into the record and which is 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 the 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 is 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. Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). In this instance, the claimant acknowledged that she had the letters at the time of the hearing but that they were not offered in evidence. The claimant claimed that the ombudsman assisting her should have offered them; however, the ombudsman was only present at the hearing to assist the claimant and the claimant was ultimately responsible for deciding whether to offer an exhibit into evidence at the hearing. The letters attached to the claimant's appeal do not meet the requirements to warrant a remand for the hearing officer to consider that evidence.

The hearing officer's decision and order are affirmed, as modified.

The true corporate name of the self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

CITY SECRETARY
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge