

APPEAL NO. 013170
FILED FEBRUARY 5, 2002

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 November 29, 2001. The hearing officer determined that the appellant (claimant) sustained an occupational disease injury; that the date of injury is _____; that she reported the injury to her employer on November 27, 2000; that she did not thereafter timely file a claim for compensation or have good cause for failing to do so; and that as a consequence of not timely filing a claim, the injury is not compensable and the claimant did not have disability. On appeal, the claimant expresses disagreement with the hearing officer's findings relating to the date of injury and failure to timely file a claim, as well as the resulting effects of these findings on the compensability and disability determinations. The respondent (self-insured) urges affirmance. The claimant responded to the carrier's response.

DECISION

Affirmed as reformed.

We note that the introductory caption of the hearing officer's decision refers to the self-insured. This typographical error is hereby reformed to reflect that the self-insured is actually (self-insured).

In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we will only consider the evidence admitted at the CCH. We note that 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 a 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). We do not find that to be the case with the documents that the claimant attached to her request for review, which were not admitted into evidence at the CCH. Consequently, the documents will not be considered on appeal.

The matters complained of by the claimant concern credibility and fact issues, which were for the hearing officer to resolve. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. We have reviewed the complained-of determinations and we conclude that they are not 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, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed, as reformed.

The true corporate name of the **a self-insured entity through East Texas Educational Association** carrier is and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Chris Cowan
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge