

APPEAL NO. 020447
FILED APRIL 3, 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 January 24, 2002. With regard to the issues before her, the hearing officer concluded that the appellant's (claimant herein) compensable injury of _____, does not extend to or include an injury to her left hip or low back and that the claimant did not sustain disability. The claimant appeals these determinations, contending that they were contrary to the evidence. The respondent (self-insured herein) argues that the claimant's appeal was untimely; that the claimant attached evidence to her appeal not admitted into evidence which, therefore, should not be considered; and that the decision of the hearing officer was sufficiently supported by the evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Since it is jurisdictional, we first must address the self-insured's contention that the claimant's request for review was untimely. The self-insured argues that the claimant's request for review was not mailed to the Texas Workers' Compensation Commission (Commission) within 15 days of the day the claimant received the decision of the hearing officer. What the self-insured fails to appreciate in making this argument is that, effective June 17, 2001, the 1989 Act was amended with the addition of Section 410.202(d) to provide that "Saturdays and Sundays and holidays listed in Section 662.003, Government Code, are not included in the computation of the time in which a request for an appeal under Subsection (a) or a response under Subsection (b) must be filed." Applying this provision, the claimant's appeal is clearly timely as records of the Commission reflect that the decision of the hearing officer was mailed to the claimant on January 31, 2002; the claimant recites that she received the decision of the hearing officer on February 2, 2002; and the claimant mailed her request for review to the Commission on February 23, 2002.

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). Applying this standard, we will not consider the documentary evidence attached to the claimant's appeal which was not admitted into evidence at the CCH.

The claimant worked as a family service worker for the self-insured. It was undisputed that on _____, the claimant sustained a compensable injury. The claimant testified that she was injured when, as she was handing out flyers promoting the self-insured's Head Start program, she tripped and fell down a step, landing flat on her stomach. On the date of her accident, the claimant was seen by her family doctor who x-rayed her ankle, prescribed an ankle brace, and placed her on restricted walking status. Shortly thereafter the claimant began to advise her family doctor of symptoms in her left hip and low back. The claimant later transferred her care to Dr. S, who placed the claimant on an off-work status as of November 6, 2001. The claimant testified that she has not worked since that time.

Conflicting evidence was presented at the hearing regarding the extent of the compensable injury. Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. The hearing officer is the sole judge of the weight and credibility of the evidence, including the medical evidence. Section 410.165(a); *and see Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. *Garza v. Commercial Insurance Company of Newark, New Jersey*, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, the Appeals Panel should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986). There is sufficient evidence to support the hearing officer's finding that the claimant's compensable injury did not extend to or include an injury to her left hip or low back.

The claimant also had the burden to prove that she had disability. The hearing officer decided that the claimant did not sustain disability. The burden of proof was on the claimant to establish she sustained disability. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's finding of no disability is supported by sufficient evidence and that it is not against the great weight and preponderance of the evidence.

The decision and order of the hearing officer are affirmed.

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

**DR. C
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Gary L. Kilgore
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Philip F. O'Neill
Appeals Judge