APPEAL NO. 020649
FILED MAY 7, 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 February 4, 2002, but reset to February 21, 2002. The hearing officer determined that the appellant (claimant) did not have disability as a result of the compensable injury she sustained on _____, beginning September 5, 2001, and continuing through the date of the hearing. The claimant appealed on sufficiency grounds and attached to her request for review diagnostic studies which were performed after the hearing. The respondent (carrier) responded, urging affirmance and objecting to the studies attached to the claimant's request for review.

DECISION

Reversed and remanded.

The claimant testified that she was injured when she passed out from heatstroke and fell to the ground. Shortly after the incident, the claimant was diagnosed by the company doctor as having a neck and right shoulder strain, given physical therapy, and continued to work her regular duties. The claimant testified that her condition did not improve so she sought treatment from Dr. M. On September 5, 2001, Dr. M also diagnosed the claimant with a neck and right shoulder sprain/strain and removed her from work. In a report dated October 23, 2001, Dr. M notes that the carrier had denied the diagnostic studies.

In support of her assertion that she had disability, the claimant attached to her appeal medical records relating to two recent MRIs, which were not exhibits at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. 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 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). The exhibits, an MRI report of the cervical spine dated March 7, 2002, showing spondyloarthrosis with multilevel degenerative disc disease, minimal remodeling osteophytes at C3-4 and C6-7; a central disc herniation/protrusion producing deformity of the spinal cord and mild central spinal canal stenosis; luschka joint hypertrophy with right neural foraminal stenosis; and an MRI report of the right shoulder dated March 7, 2002, showing AC hypertrophic changes with type II acromion with mild medial outlet narrowing; tendinosis without full thickness tear involving the rotator cuff; and minimal joint effusion; as well as a medical report attributing these abnormalities to the _____, injury, were not in existence at the time of the CCH. There is evidence in the record that the claimant was referred for an MRI prior to the

hearing, but that the carrier denied the diagnostic studies because the claim was being disputed.

In her statement of the evidence, the hearing officer states

> "Dr. [M] failed to address why the [c]laimant could not have continued to work at her regular job duties after September 5, 2001 especially since he has only diagnosed a right shoulder and neck sprain/strain injury. Although disability can be proven by the [c]laimant's testimony alone, the testimony and supporting medical evidence fails to show how her inability to obtain and retain employment at wages equivalent to her pre-injury wage beginning September 5, 2001 and continuing through the date of this hearing was a result of the claimed injury of _____."

Based upon this statement, we conclude that this is new evidence which is so material that it would probably produce a different result, that it came to the appellant's knowledge after the hearing, that it is not cumulative, and that it was not through lack of diligence that it was not offered at the hearing.

Accordingly, the hearing officer's decision and order that the claimant did not have disability as a result of the injury sustained on _____, beginning September 5, 2001, and continuing through the date of the hearing is reversed and remanded back to the hearing officer. On remand, the hearing officer is directed to hold a hearing, admit into evidence and consider the March 7, 2002, diagnostic studies of the claimant's cervical spine and right shoulder, as well as the attached report from Dr. M, allow the carrier to offer evidence, and make a determination as to what period of time, if any, the claimant had disability as a result of her _____, compensable injury.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **SECURITY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SYSTEM
800 BRAZOS
AUSTIN, TEXAS 78701.

Daniel R. Barry
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge