

APPEAL NO. 021216
FILED JUNE 24, 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 April 16, 2002. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to or include an injury to the right knee. The claimant appealed, arguing that the hearing officer erred in determining extent of injury. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant included with his appeal documents that were not offered at the CCH, and, in addition, resubmitted several documents that were offered and admitted at the CCH. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. 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 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 new documentation is a Report of Medical Evaluation (TWCC-69) prepared by Dr. D, dated June 6, 2001; we conclude that with due diligence it could have been presented at the CCH. Accordingly, we will not consider this document submitted for the first time on appeal.

The hearing officer did not err in reaching the complained-of determination. The issue of extent of injury involves a question of fact for the hearing officer to resolve. The evidence before the hearing officer was conflicting. 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)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is 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).

We affirm the decision and order of the hearing officer.

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

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Roy L. Warren
Appeals Judge