APPEAL NO. 021444
FILED JULY 19, 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 was held on May 16, 2002. The hearing officer determined that (1) the compensable injury of _____, does not extend to include an injury to the cervical spine; and (2) the appellant's (claimant) impairment rating (IR) is 10%. In her appeal, the claimant asserts error in each of those determinations. In its response, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the compensable injury of _____, does not extend to include an injury to the cervical spine. This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n 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 that the compensable injury does not extend to the cervical spine is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant attached new evidence to her appeal. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. *See generally* 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). Upon our review, the evidence offered is not so material that it would probably produce a different result, nor is it shown that the documents could not have been obtained prior to the hearing below. The evidence, therefore, does not meet the requirements for newly discovered evidence.

The hearing officer did not err in giving presumptive weight to the designated doctor's report and determining that the claimant's IR is 10%. The claimant argues that the designated doctor's IR should not have been adopted because it does not include a rating for the cervical spine. Given our affirmance of the determination that the compensable injury does not include the cervical spine, we likewise affirm the hearing officer's IR determination. By definition, an IR can only be assigned for the compensable injury. Section 401.011(24).

In her appeal, the claimant appears to argue that the designated doctor should be disqualified because of alleged "personal differences" between the designated doctor and the claimant's treating doctor. The claimant failed to raise this argument at the hearing. As such, she failed to preserve this argument for purposes of appeal.

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

**CT CORPORATION SYSTEM**
**350 NORTH ST. PAUL STREET**
**DALLAS, TEXAS 75201**.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Susan M. Kelley
Appeals Judge