APPEAL NO. 021701
FILED AUGUST 13, 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 29, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that she did not have disability; and that the respondent (carrier) would be relieved of liability under Section 409.002 if the claimant had sustained an injury in the course and scope of employment because of the claimant's failure to timely report her alleged injury to her employer. The claimant, through her attorney, filed an appeal of the injury, disability, and notice determinations on sufficiency grounds. Subsequently, the claimant sent a second, timely, pro se appeal, which was also in the nature of a sufficiency challenge. The claimant attached several documents to her pro se pleading. In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Affirmed.

The claimant attached several documents to her pro se appeal, some of which were not admitted in evidence 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. 93111, decided March 29, 1993. To constitute "newly discovered evidence," the evidence must have come to appellant's knowledge since the hearing; it must not have been due to lack of diligence that it came to the appellant's knowledge no sooner; it must not be cumulative; and it must be so material that it would probably produce a different result upon a new hearing. *See* Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). After reviewing the documents attached to the appeal that were not in evidence, we cannot agree that they meet the requirements for newly discovered evidence and, as such, they will not be considered.

There was conflicting evidence presented on the factual questions of whether the claimant had a compensable occupational disease injury, whether she had disability, and whether the claimant timely reported her alleged injury to her employer. All three of those issues presented questions of fact for the hearing officer. Section 410.165(a) provides that the hearing officer 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. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence and to determine what facts the evidence has established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer was not persuaded that the claimant sustained her burden of proof on either the injury, notice, or disability issues. The challenged determinations are not so against the great weight of the evidence as to be clearly wrong or manifestly unjust.

Accordingly, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

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Elaine M. Chaney
Appeals Judge

CONCUR:

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Judy L. S. Barnes
Appeals Judge

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Robert W. Potts
Appeals Judge