APPEAL NO. 022350
FILED OCTOBER 22, 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 July 17, 2002, with the record being closed on August 9, 2002. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to and include a herniated nucleus pulposus at L5-S1. The claimant appeals that determination. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

The claimant included with her appeal a document 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 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 new documentation submitted by the claimant is a letter prepared by Dr. D, dated September 12, 2002. We conclude that with due diligence the claimant could have requested that the letter from her doctor be compiled earlier so that it could have been presented along with the results of the EMG testing, for which the record was held open by the hearing officer. 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 **(a certified self-insured)** and the name and address of its registered agent for service of process is

SECRETARY OF STATE OF TEXAS
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Michael B. McShane
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Margaret L. Turner
Appeals Judge