APPEAL NO. 022470
FILED NOVEMBER 20, 2002

This case returns following our remand in Texas Workers' Compensation Commission Appeal No. 021588, decided August 8, 2002. A hearing on remand was held on September 4, 2002. At the remand hearing, the hearing officer considered the newly discovered evidence that the appellant (self-insured) had forwarded to the Appeals Panel with its initial appeal and the claimant's evidence in response thereto. Following the hearing on remand, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that she had disability from December 1, 2001, through the date of the hearing on remand. In its appeal, the self-insured argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. In addition, the self-insured asserts error in the hearing officer's having excluded one of the exhibits it tendered on remand. The appeal file does not contain a response from the claimant to the self-insured's appeal.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____, and that she had disability from December 1, 2001, to the date of the hearing on remand. There was conflicting evidence on the injury and disability issues. The hearing officer is the sole judge of the weight and the credibility to be given the evidence. Section 410.165(a). The hearing officer resolved the conflicts and inconsistencies in the evidence in favor of the claimant and she was acting within her province as the fact finder in so doing. Nothing in our review of the record reveals that the challenged determinations are 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 disturb those determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We find no merit in the self-insured's assertion that the hearing officer erred in excluding its Exhibit No. 2 on remand. That exhibit was a peer review report that was requested and obtained after the first hearing in this case. The hearing officer determined that the self-insured did not establish good cause for the admission of the document, noting that the report could have been requested and obtained prior to the date of the initial hearing. In other words, the hearing officer determined that the self-insured did not exercise due diligence in obtaining the evidence and thus, the hearing officer further determined that the peer review report was not "newly discovered" evidence that was properly considered on remand. The hearing officer did not abuse her discretion in so finding. The self-insured also contends that the hearing officer erred in admitting one of the claimant's exhibits, an operative report from Dr. D dated August 14, 2002, which describes the left knee surgery that the claimant underwent on that day.

The self-insured appears to argue that the hearing officer should have excluded the operative report because she excluded its peer review report. We cannot agree with that assertion. The hearing officer found good cause for the admission of the exhibit because the surgery occurred on August 14, 2002, after the June 5, 2002, hearing and just two weeks before the hearing on remand. Unlike the peer review report, that exhibit could not have been obtained in time to be presented at the first hearing in this case because the surgery simply had not yet occurred. As such, the hearing officer did not err in admitting the operative report.

The hearing officer's decision and order 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

CR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Michael B. McShane
Appeals Panel
Manger/Judge

_____
Robert W. Potts
Appeals Judge