

APPEAL NO. 022478
FILED NOVEMBER 14, 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 August 27, 2002. The hearing officer resolved the disputed issue by deciding that the compensable injury of _____, does not extend to and include the diagnosed left hand injury, an injury to the left ring finger, and/or a left wrist sprain. The appellant (claimant) appeals, arguing that the hearing officer erred as a matter of law because the left hand was part of the original injury. The claimant argues that the extent-of-injury argument is an attempt by the respondent (carrier) to get around the time limitations for disputing the original compensable injury. The claimant attached both evidence admitted at the CCH and new evidence to his appeal. The carrier responds, urging affirmance.

DECISION

Affirmed.

In deciding whether the hearing officer's decision is sufficiently supported by the evidence we will only consider the evidence admitted at the hearing. We will not generally consider evidence not submitted into the record, and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. 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 a 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). With this in mind, and after reviewing the evidence attached to the claimant's appeal, we find that it does not constitute new evidence which requires consideration for the first time on appeal. Additionally, we note that any issue of waiver was not before the hearing officer at the CCH nor was it litigated by agreement of the parties and will not be addressed for the first time on appeal.

The claimant had the burden to prove the extent of his compensable injury. The hearing officer found that the claimant failed to establish by a preponderance of the evidence that his compensable injury extends to include the diagnosed left hand injury, an injury to the left ring finger, and/or a left wrist sprain. The 1989 Act makes the hearing officer the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). The evidence is conflicting regarding the extent-of-injury issue. As the finder of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No.

950084, decided February 28, 1995. An appellate-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. Appeal No. 950084. We conclude that the hearing officer's decision on the extent-of-injury issue is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). It was undisputed at the CCH that the carrier accepted a compensable injury consisting of a fracture of the claimant's fourth metacarpal on his left hand. The affirmance of the extent of injury determination does not affect the carrier's acceptance of the compensable injury sustained by the claimant on _____ . The claimant is entitled to reasonable and necessary medical treatment for that injury.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ROYAL INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge