APPEAL NO. 023220
FILED JANUARY 23, 2003

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 November 19, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is entitled to change treating doctors to Dr. E pursuant to Section 408.022; that the claimant did not have disability from January 26 through April 30, 2002; and that the claimant had disability from May 1, 2002, through the date of the hearing. The appellant (carrier) asserts error in the determinations that the claimant was entitled to change treating doctors and that he had disability from May 1, 2002, through the date of the hearing. In his response, the claimant urged affirmance of the challenged determinations. In his response, the claimant also asserts error in the determination that he did not have disability from January 26 to April 30, 2002. The claimant's response was also timely filed to serve as an appeal; thus, that portion of the response will be considered as a cross-appeal. The carrier did not respond to the claimant's cross-appeal.

DECISION

Affirmed.

Section 408.022(c) provides a list of criteria for approving a change of treating doctors. A change to secure a new medical report is prohibited. Section 408.022(d). See also Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9 (Rule 126.9). The carrier contends on appeal that these findings are against the great weight of the evidence because the claimant requested to be released from Dr. H care as a means of avoiding the release to return to work. The hearing officer found that the claimant "requested a change of treating doctor from [Dr. H] to [Dr. E] because [Dr. H] released him from his care since there was nothing else he could do for him, which impaired the doctor-patient relationship." Based on this finding, the hearing officer concluded that the claimant "is entitled to change treating doctors to [Dr. E] pursuant to [Section] 408.022." The hearing officer was persuaded that the change was not made to avoid being released to return to work and she was acting within her province as the sole judge of the evidence in so deciding. Because the hearing officer was persuaded that Dr. H was no longer willing to serve as the claimant's treating doctor, she did not err in determining that the claimant was entitled to a change of treating doctor.

The claimant had the burden to prove that he sustained disability as defined by Section 401.011(16). A claimant's testimony alone is sufficient to establish that an injury has caused disability. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). Conflicting evidence was presented on this issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the

hearing officer's determination that the claimant did not have disability from January 26 to April 30, 2002, but that he did have disability from May 1, 2002, through the date of the hearing is supported by sufficient evidence and that it is not 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 the disability determination on appeal. In re King's Estate, 150 Tex. 662; 244 S.W.2d 660 (1951)[1]. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The claimant attached some new evidence to his response/cross-appeal, which was 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. 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). The claimant did not show that the new evidence submitted for the first time on appeal could not have been obtained prior to the hearing. Thus, the evidence does not meet the standard for newly discovered evidence and it will not be considered.

[1] We note that the case citations provided in carrier's appeal were provided for purposes of arguing precedent. They were not evidence as the claimant contends in his pleading.

The hearing officer's decisions and order are affirmed.

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

JIM MALLOY
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.

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Elaine M. Chaney
Appeals Judge

CONCUR:

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Thomas A. Knapp
Appeals Judge

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Terri Kay Oliver
Appeals Judge