

APPEAL NO. 030156  
FILED FEBRUARY 18, 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 (CCH) was held on December 10, 2002. The hearing officer resolved the disputed issue by deciding that the compensable (right upper extremity) injury of \_\_\_\_\_, does not include an injury to the cervical spine at C5-6. The appellant (claimant) appealed, essentially on sufficiency of the evidence grounds and attached medical articles to her appeal, which were not in evidence at the CCH. The respondent (carrier) responded, urging affirmance and objected to the claimant's attempt to introduce additional evidence for consideration on appeal.

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.

It was undisputed that the claimant sustained a compensable repetitive trauma injury to her right upper extremity on \_\_\_\_\_. The evidence reflected that the claimant has had several surgeries since her date of injury. The sole issue before the hearing officer was: "Does the compensable injury of \_\_\_\_\_, include an injury to the cervical spine at C5-6?" Conflicting evidence was presented on the extent-of-injury issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier 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 findings of fact in this regard are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Daniel R. Barry  
Appeals Judge