APPEAL NO. 030171
FILED MARCH 10, 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 19, 2002. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant) compensable injury of _____, includes a left shoulder injury and that the claimant's correct impairment rating (IR) cannot be determined because the designated doctor failed to correctly apply the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) to this compensable injury. The appellant (carrier) appealed, arguing that the extent-of-injury determination was not supported by sufficient evidence and was so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. The claimant responded, urging affirmance. The claimant included a "diagram" of the incident with his response. The carrier objected to the drawing being submitted for the first time on appeal. Neither party appealed the hearing officer's determinations regarding the IR.

DECISION

Affirmed.

In his response, the claimant submitted a drawing of the incident which was not presented at the CCH. Generally, the Appeals Panel does not consider documents not offered into evidence at the hearing 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 a 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). We do not find that to be the case with the drawing submitted with the appeal which was neither offered nor admitted into evidence at the hearing.

It was undisputed that the claimant sustained a compensable injury on _____. At issue was whether the compensable injury extended to include an injury to the left shoulder. The evidence reflected that the claimant had surgery to his cervical spine on June 14, 2001. The hearing officer noted that the claimant was credible in his assertions that the primary pain problem was initially with his right shoulder and that although the surgery did not cure this problem, after surgery, the pain in his left shoulder became more noticeable. Conflicting evidence was presented on the extent-of-injury issue. We would caution that while chronology alone does not establish a causal connection between an accident and a later-diagnosed injury (Texas Workers'

Compensation Commission Appeal No. 94231, decided April 8, 1994), neither does a delayed manifestation nor the failure to immediately mention an injury to a health care provider necessarily rule out a connection. *See* Texas Employers Insurance Company v. Stephenson, 496 S.W.2d 184 (Tex. Civ. App.-Amarillo 1973, no writ). Generally, lay testimony establishing a sequence of events, which provides a strong, logically traceable connection between the event and the condition, is sufficient proof of causation. Morgan v. Compugraphic Corp., 675 S.W.2d 729, 733 (Tex. 1984). The hearing officer was persuaded that the claimant met his burden of proving that his compensable injury included his left shoulder.

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 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

RICHARD MAYER
11910 GREENVILLE AVENUE
DALLAS, TEXAS 75243.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Roy L. Warren
Appeals Judge