

APPEAL NO. 030370
FILED MARCH 24, 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 January 24, 2003. The hearing officer resolved the disputed issue by deciding that the _____, compensable injury does not extend to include right carpal tunnel syndrome (CTS) and De Quervain's syndrome. The appellant (claimant) appealed, disputing the hearing officer's determination. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

It was undisputed that the claimant sustained a compensable injury on _____. At issue was whether the compensable injury extended to include the conditions of right CTS and De Quervain's syndrome. The hearing officer did not err in determining that the compensable injury does not extend to include these conditions. The issue of extent of injury involves a question of fact for the hearing officer to resolve. The evidence before the hearing officer was conflicting. Differing medical opinions were provided at the CCH regarding the causation of CTS and De Quervain's syndrome. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In its response, the carrier objects to the statements contained in the claimant's appeal regarding the claimant's treating doctor's commentary on the testimony given by Dr. P at the CCH. In as much as this is submitted as evidence, evidence submitted for the first time on appeal is generally not considered unless it constitutes newly discovered evidence. 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 included in the claimant's appeal, we find that it does not constitute new evidence which requires remand.

We find no merit in the claimant's contention that the hearing officer's finding that "the medical records and testimony presented do not preponderate to show that the occupational diseases of right carpal tunnel syndrome and right de Quervain's syndrome were caused by or the result of the compensable injury of November 28, 2000," is a determination that these two conditions can only be the result of repetitive motion injuries. The challenged determination is simply a determination that the claimant has not met his burden to prove that the compensable injury extends to include the conditions of right CTS and De Quervain's syndrome.

We affirm the decision and order of the hearing officer.

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

**CINDY GHALIBAF
7610 STEMMONS FREEWAY
DALLAS, TEXAS 75247-4216.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Terri Kay Oliver
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge