

APPEAL NO. 030691
FILED APRIL 16, 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 February 7, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain an injury, including a lower back and bilateral shoulders injury on _____; that the claimant did not sustain a compensable injury, including a compensable lower back and bilateral shoulders injury, in the course and scope of employment with the employer on _____, or any other date; and that the claimant did not sustain disability beginning on October 8, 2002, and continuing through the present date of this hearing on February 7, 2003, or for any other time period, because the claimant did not have a compensable injury while working for the employer on _____, or any other date.

DECISION

Affirmed.

Attached to the claimant's appeal is a medical document that was not offered into evidence at the hearing. 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 document attached to the appeal, as the information in that document was clearly known to the claimant prior to the CCH and could have been obtained and presented with the exercise of due diligence by the claimant.

There was conflicting evidence presented on the disputed issues of injury and disability. The issues of injury and disability are questions of fact. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.);

Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no basis to reverse the hearing officer's resolution of the injury or disability issues.

The claimant contends that the hearing officer erred in admitting Carrier's Exhibit No. 6, a statement from the claimant's district manager. Review of the record reflects that the claimant did not object to the admission of Carrier's Exhibit No. 6 at the CCH. Under these circumstances, we find the claimant has failed to preserve error for our review.

Further, the claimant contends that the hearing officer was not fair and was unwilling to listen to the claimant. Review of the record indicates that the hearing officer was not biased to either party. Accordingly, we perceive no error.

The hearing officer's decision and order are affirmed.

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

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

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Roy L. Warren
Appeals Judge