

APPEAL NO. 030724
FILED MAY 6, 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 February 18, 2003. The hearing officer determined that the respondent (carrier) waived its right to contest the compensability of the claimed injury by not timely contesting in accordance with the Sections 409.021 and 409.022; that the appellant (claimant) sustained a compensable repetitive trauma injury with a date of injury of _____; that the compensable injury does not extend to carpal tunnel syndrome to the left wrist; and that the claimant had disability from June 7 to October 29, 2002, but not from October 30, 2002, through February 18, 2003. The claimant appeals the determination that she did not have disability beyond October 29, 2002, and attaches new evidence to her request for review. The carrier urges affirmance of the hearing officer's decision and order and contends that the Appeals Panel is without jurisdiction to consider the claimant's new evidence.

DECISION

Affirmed.

In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we generally will not consider evidence that is offered 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 claimant'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 two documents attached to the claimant's appeal, which were not offered into evidence at the hearing. The record contains no evidence supporting the claimant's contention that a magnetic resonance imaging (MRI), the result of which is attached to the appeal, could not have been performed prior to the hearing or that requests to perform an MRI had been made and denied. Accordingly, we decline to consider the new evidence. We further note that with regard to the sole appealed issue of disability, the new evidence documenting the condition of the claimant's left wrist would not be so material as to produce a different result.

The hearing officer did not err in determining that the claimant did not have disability from October 29, 2002, through the date of the hearing. Disability is a factual question for the hearing officer to resolve. 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 from the evidence presented. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231-4813.**

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge