

APPEAL NO. 031177  
FILED JUNE 26, 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 March 31, 2003. The hearing officer determined that the appellant's (claimant) \_\_\_\_\_, compensable injury does not include right carpal tunnel syndrome and that the claimant's average weekly wage (AWW) is to be recalculated to reflect the retroactive adjustment made to the claimant's pay on February 10, 2003, from \$12.76 per hour to \$13.14 per hour. The claimant appeals these determinations and attaches new evidence to her request for review. The respondent (carrier) urges affirmance of the hearing officer's determinations and argues that the claimant's appeal was not timely filed.

DECISION

Affirmed.

We first consider the respondent's assertion that the claimant filed an untimely appeal. Records of the Texas Workers' Compensation Commission (Commission) reflect that the hearing officer's decision was mailed to the claimant on April 11, 2003. Pursuant to Section 410.202(a), for an appeal to be considered timely, it must be filed or mailed within 15 days, excluding Saturdays, Sundays, and holidays listed in the Texas Government Code, of the date of receipt of the hearing officer's decision. Applying Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)) and Section 410.202, the claimant's request for review was timely filed, as it was mailed on May 7, 2003, and the Commission received it on May 12, 2003.

In determining whether the hearing officer's decision is sufficiently supported by the evidence, we will generally 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 case be remanded for further consideration, we consider whether it came to 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 documents that the claimant attached to her request for review, which were not offered into evidence at the hearing. Accordingly, we decline to consider these documents on appeal.

Extent of injury 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 extent-of-injury determination 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 hearing officer explained in his decision that on February 10, 2003, the school district/employer retroactively paid the claimant the difference between \$12.76 per hour, an amount that was subsequently determined to be incorrect, and the adjusted wage of \$13.14 per hour. Apparently, prior to the adjustment, the claimant's AWW had been calculated based on the \$12.76 per wage. The adjusted wage of \$13.14 per hour was applicable in the 13 weeks preceding the compensable injury. On appeal, the claimant complains that the AWW should be based on the \$13.78 hourly wage listed in the Employer's First Report of Injury or Illness, which was not offered into evidence at the hearing. The claimant testified, however, that she was never paid at the \$13.78 per hour rate. The hearing officer, applying Sections 408.041 and 408.043, determined that the claimant's AWW should be recalculated to reflect the retroactive adjustment to \$13.14 per hour. We perceive no error in the hearing officer's resolution of the AWW issue.

The hearing officer's decision and order are affirmed.

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

**C T CORPORATION SYSTEM  
350 NORTH ST PAUL STREET  
DALLAS, TEXAS 75201.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge