

APPEAL NO. 031225
FILED JUNE 30, 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 April 24, 2003. The hearing officer determined that the appellant's (claimant) _____, compensable injury does not extend to include a right inguinal hernia. The claimant appealed on sufficiency of the evidence grounds and submitted a medical report not offered into evidence at the hearing. The respondent (self-insured) responded, objecting to the report attached to the claimant's appeal, and otherwise urging affirmance.

DECISION

Affirmed.

Attached to the claimant's appeal was a document not offered into evidence at the hearing. The document is dated April 25, 2003, and appears to be a rebuttal to a document offered into evidence by the self-insured dated March 23, 2003. Generally, the Appeals Panel does not consider evidence not offered 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. Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ); Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993. We do not find that to be the case with the document attached to the appeal, which was neither offered nor admitted into evidence at the hearing.

The claimant is employed as a fire inspector. He testified that he considered his job to be light duty in nature. The record indicates that on April 6, 1998, the claimant underwent surgery to remove a hanging abdominal pannus, which was caused by treatment he received as a child. The claimant presented evidence to show that on _____, while participating in a training exercise, he fell 10-12 feet. The claimant testified that the fall caused a sore shoulder, thumb, and elbow, but that he missed no time from work and received no medical treatment. The claimant testified that he learned he had a right inguinal hernia on October 29, 2002, when he went to the doctor for further treatment for his noncompensable pannus condition. The claimant testified that he never suffered from any symptoms due to the hernia right up until the date he had surgery on it in February of 2003. Medical evidence in the record indicates that the _____, fall could have caused the hernia, but no doctor specifically links the fall to the hernia. The hearing officer commented in the Statement of the

Evidence that the doctor's report "amounts to no more than speculation about the cause."

The claimant had the burden to prove that his compensable injury extends to include a right inguinal hernia. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). An appellate body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Worker's Compensation Commission Appeal No. 950084, decided February 28, 1995. Our review of the record reveals that the hearing officer's extent-of-injury determination is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**EF
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge