

APPEAL NO. 031267
FILED JUNE 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 was held on April 14, 2003. The hearing officer determined that the compensable injury sustained by the appellant (claimant) on _____, does not extend to or include a disc herniation at L3-4, which impinged upon the thecal sac. The claimant appeals this determination and requests that consideration be given to the new evidence attached to his request for review, which was not offered at the hearing. The respondent (carrier) urges affirmance of the hearing officer's decision and argues that the new evidence should not be considered on appeal.

DECISION

Affirmed.

Attached to the claimant's request for review is a statement made by his wife, wherein she argues that her "testimony was not taken into consideration." We note that the hearing officer allowed the claimant's wife, who is a therapist in a chiropractor's office, to testify regarding matters relating generally to her husband's condition and the health care he received; however, the claimant's wife was not allowed to testify to matters relating to causation, as she is not an expert. We perceive no error in the hearing officer having so found.

Along with the statement from the claimant's wife, numerous medical documents were attached to the claimant's appeal, all but one of which were admitted into evidence at the hearing. However, on appeal, these documents contain explanatory notes, which are handwritten, presumably by the claimant's wife. In deciding 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 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 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 containing the handwritten notes that the claimant attached to his request for review. Accordingly, we decline to consider these documents on appeal.

Extent of injury is a question of fact 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 is 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

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

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge