APPEAL NO. 031322
FILED JULY 10, 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 April 25, 2003. The hearing officer resolved the disputed issue by deciding that the compensable injury of _____, does include an injury to the appellant's (claimant) right arm, but does not include an injury to the claimant's cervical spine. The claimant appealed the determination that the compensable injury does not extend to his cervical spine. The respondent (carrier) responded, urging affirmance. The hearing officer's determinations that the compensable injury extends to the claimant's right arm was not appealed and therefore has become final. Section 410.169.

DECISION

Affirmed.

The claimant attached evidence admitted at the CCH and new evidence to his appeal which would purportedly show that the compensable injury extended to include his cervical spine. Additionally, the claimant's doctor sent correspondence with attachments to the Texas Workers' Compensation Commission, supporting the claimant's appeal, which were not offered or admitted into evidence at the CCH. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. *See generally*, 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). Upon our review, the evidence offered is not so material that it would probably produce a different result, nor is it shown that the documents could not have been obtained prior to the hearing below. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The parties stipulated that the carrier has accepted an _____, compensable injury to the claimant's left arm and a bruise to his left upper leg. At issue was whether the compensable injury extended to include the claimant's right arm and cervical spine. The hearing officer acknowledged that there are medical records beginning in May of 2002 that document cervical pain but was persuaded that the preponderance of the credible evidence is that the claimant's compensable injury extended only to his right arm. Extent of injury is a factual question for the fact finder to resolve. Conflicting evidence was presented on these issues. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of 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, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The evidence supports the hearing officer's factual determinations. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

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

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Veronica Lopez-Ruberto
Appeals Judge