

APPEAL NO. 031489
FILED JULY 8, 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 May 7, 2003. The hearing officer determined that the compensable injury sustained by the appellant (claimant) on _____, does not extend to or include spondylosis and a disc bulge at the L5-S1 level of the claimant's lumbar spine or to degenerative disc disease with an intraosseous disc herniation through the inferior endplate of the T11 vertebra at the T11-12 level of his thoracic spine, but does extend to include pneumonia, and that the claimant had disability from July 7 through July 10, 2002. The claimant appeals the unfavorable extent-of-injury determination and the determination that disability ended on July 10, 2002. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

Initially, we consider the documents attached to the claimant's appeal, which were not admitted in evidence at the hearing, namely, the June 2, 2003, narrative report from Dr. B, one of the claimant's treating doctors, and a statement by the claimant stating that there was a faulty airbag in the "18-wheeler" truck that he was driving that did not activate and protect his back when he lost control of the truck. 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). Acknowledging that the doctor's report was created after the date of the hearing, we cannot agree that the evidence meets the requirements of newly discovered evidence in that the claimant did not show that the new evidence submitted for the first time on appeal could not have been obtained prior to the hearing. The document purports to be an opinion from one of the doctors who treated the claimant about the cause of his back pain. The claimant could have sought that opinion earlier and he did not demonstrate any efforts to do so. The claimant testified at the hearing and had ample opportunity to inform the hearing officer about the truck's faulty airbag. Accordingly, the evidence does not meet the standard for newly discovered evidence and it will not be considered on appeal.

The hearing officer did not err in making the complained-of extent-of-injury and disability determinations. The determinations presented questions 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)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are 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). This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

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

**RUSS LARSEN
860 AIRPORT FREEWAY WEST, SUITE 500
HURST, TEXAS 75054-3286.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge