APPEAL NO. 032033
FILED SEPTEMBER 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 was held on July 11, 2003. The hearing officer determined that the appellant (claimant) is not entitled to change treating doctors from Dr. S to Dr. B; that Dr. S is the claimant's current treating doctor; and that the claimant did not have disability from October 19, 2002, through March 13, 2003. The claimant appealed the hearing officer's determinations based on sufficiency of the evidence and argues that the hearing officer should have recused himself from the proceedings "because of his prejudice." The claimant attaches new evidence to his request for review. The respondent (self-insured) urges affirmance of the hearing officer's decision and contends that the claimant's newly submitted evidence should not be given consideration.

DECISION

Affirmed.

The claimant attached numerous documents to his appeal. With the exception of an Appeals Panel decision from a 1995 workers' compensation proceeding involving the claimant, the documents submitted on appeal are duplicates of those entered into evidence at the hearing. In determining whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that was not submitted into the record 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 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 Appeals Panel decision submitted by the claimant with his request for review. However, given that the claimant explains in his appeal that the decision was offered for the purpose of showing that the hearing officer presiding over the instant case had been "removed" in the 1995 case because of "racial comments," we reviewed the decision due to the serious nature of the allegations of impropriety and bias on the part of the hearing officer. The 1995 decision reflects that the hearing record in that case "contained no discussion concerning the reason for the recusal." The claimant provides no specific information regarding his allegations of "prejudice" and the hearing record in the present case indicates that the claimant made no objection to the hearing officer presiding over the case. For the foregoing reasons, we conclude that the allegations of racial bias made by the claimant are unsubstantiated and do not necessitate a reversal.

The claimant testified that he was employed as a shuttle bus driver for the employer and that he sustained an injury to his left shoulder when another shuttle bus collided with his shuttle bus on June 30, 2002. The claimant sought medical treatment from Dr. S, however the claimant contends that Dr. S incorrectly requested an MRI of the right shoulder, rather than the left shoulder, and that Dr. S refused to take the claimant off work. The claimant testified that when he questioned Dr. S about the incorrect MRI to the right shoulder, Dr. S became upset and he told the claimant to seek another treating doctor. The medical records show that the claimant was initially treated for his left shoulder in June 2002, and that he was treated for his right shoulder in September 2002. The evidence reflects that the self-insured contested a June 30, 2002, specific injury to the left shoulder and a September 27, 2002, repetitive trauma injury to the right shoulder. The claimant contends that he continued to work full duty for the employer until October 19, 2002, when he stopped working due to the difficulty in completing his job duties because of his shoulder injury. The claimant then sought treatment for his left shoulder from Dr. B, who took the claimant off work on October 25, 2002. The claimant contends that he is entitled to change treating doctors from Dr. S to Dr. B because of inappropriate medical treatment by Dr. S and that he had disability from October 19, 2002, through March 13, 2003, due to his compensable injury of June 30, 2002.

The hearing officer did not err in determining that the claimant is not entitled to change treating doctors. Section 408.022 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE 126.9(e) (Rule 126.9(e)) establishes the criteria for selecting and changing a treating doctor. The hearing officer reviewed the evidence and determined that the claimant sought a change of treating doctors from Dr. S to Dr. B for an improper reason in that the reason he sought the change was to obtain a new medical report taking him off work. In view of the evidence presented, we cannot agree that the hearing officer erred in determining that the claimant is not entitled to change treating doctors.

Disability 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)) and 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)). It was the hearing officer's prerogative to 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). Nothing in our review of the record indicates that the hearing officer's disability 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'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

NC
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

or

GK
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

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Chris Cowan
Appeals Judge

CONCUR:

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Thomas A. Knapp
Appeals Judge

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Margaret L. Turner
Appeals Judge