

APPEAL NO. 032076
FILED SEPTEMBER 12, 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 May 15, 2003 and continued on July 2, 2003. The hearing officer resolved the disputed issue by deciding that the compensable injury of _____, does not extend to and include the alleged psychological problems of depression and anxiety. (Claimant) appeared at the CCH as a witness but did not want to pursue the disputed issue on her own behalf. The appellant (subclaimant) appealed essentially on sufficiency of the evidence grounds. Respondent 1 (carrier) responded, urging affirmance. The carrier also contends that the subclaimant's appeal contains new information that appears to be testimony, which should therefore not be considered.

DECISION

Affirmed.

The sole issue before the hearing officer was whether the claimant's compensable injury of _____, includes the psychological problems of depression and anxiety. The Appeals Panel observed in Texas Workers' Compensation Commission Appeal No. 961449, decided September 9, 1996, that the fact that there may be more than one cause of the claimant's psychological condition does not preclude a finding of compensability, provided that there is a causal connection between the compensable injury and the claimant's psychological problems. The hearing officer was not persuaded that the evidence was sufficient to establish that the compensable injury extends to include the psychological problems of depression and anxiety.

Extent of injury is question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. There was conflicting evidence on the issue. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence and determine what facts had been established. 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 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record reveals that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse the hearing officer's decision on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The carrier contends that the subclaimant's appeal contains new information in the form of testimony from the subclaimant. We note that much of the subclaimant's

appeal is argument based on evidence in the record of the CCH. However, the appeal does contain some new information, which was not introduced into evidence at the CCH. In determining whether new evidence submitted with an appeal requires remand for further consideration, the Appeals Panel considers whether the evidence came to the knowledge of the party after the hearing, whether it is cumulative of other evidence of record, whether it was not offered at the hearing due to a lack of diligence, and whether it is so material that it would probably result in a different decision. See Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. Upon our review, we cannot agree that the new information meets the requirements of newly discovered evidence, in that the subclaimant did not show that the new evidence submitted for the first time on appeal could not have been obtained prior to the hearing or that its inclusion in the record would probably result in a different decision. Any new information included in the appeal does not meet the standard for newly discovered evidence and will not be considered.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge