

APPEAL NO. 032195
FILED SEPTEMBER 22, 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 July 16, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, or _____; that the respondent (carrier) is relieved of liability under Section 409.002 because the claimant failed, without good cause, to timely notify her employer pursuant to Section 409.001; and that the claimant did not have disability. The claimant appeals, essentially on sufficiency of the evidence grounds, and attaches numerous documents to her appeal. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Attached to the claimant's appeal are documents that were admitted into evidence at the hearing, as well as several documents that were not offered into evidence at the hearing. Generally, the Appeals Panel does not consider documents not offered into evidence at the hearing 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 a 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). The documents included phone bills and earnings statements that were in existence long before the CCH was held in this case. Such documents could have been presented at the hearing with the exercise of due diligence by the claimant. Also included with the claimant's appeal were a Report of Medical Evaluation (TWCC-69) from a Texas Workers' Compensation Commission-selected designated doctor, dated July 24, 2003, indicating that the claimant was not at maximum medical improvement on that date, and a functional capacity evaluation dated August 1, 2003. The latter two documents were not in existence at the time that the CCH was held, however, the documents have no relevance to the ultimate determination by the hearing officer that the claimant did not sustain a compensable injury, and do not satisfy the legal requirements for admissibility as newly discovered evidence. None of the additional documents submitted by the claimant will be considered.

The hearing officer did not err in making the complained-of determinations. The determinations involved 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)). While there were definitely conflicts in the evidence, the hearing officer stated that the claimant's "testimony simply was not persuasive" and resolved the conflicts against the claimant. 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).

We affirm the decision and order of the hearing officer.

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

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

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge