

APPEAL NO. 032205
FILED SEPTEMBER 30, 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 17, 2003. The appellant (claimant) appeals the hearing officer's decision that he did not have disability from August 2, 2001, which was the date of a prior CCH, through August 1, 2002, which was the date the designated doctor reported that the claimant reached maximum medical improvement. The claimant asserts that the hearing officer's decision is wrong. The respondent (carrier) states that it agrees with the hearing officer's decision.

DECISION

Affirmed.

Attached to the claimant's appeal are documents that were admitted into evidence at the CCH, as well as several documents that were not offered into evidence at the CCH. Section 410.203(a) provides that the Appeals Panel shall consider the record developed at the CCH. Generally, the Appeals Panel does not consider documents that were not offered into evidence at the CCH. 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 CCH, whether it is cumulative, whether it was through lack of diligence that it was not offered at the CCH, 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. It appears that the information in the documents attached to the appeal that were not offered into evidence could have been secured through due diligence prior to the CCH, and the claimant offers no explanation why such information was not provided at the CCH. Thus, we decline to consider those documents that are attached to the appeal that were not made a part of the CCH record.

The parties stipulated that the claimant sustained a compensable injury to his right knee on _____. Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The claimant had the burden to prove that he had disability. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

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

**STEVE ROPER
1616 SOUTH CHESTNUT STREET
LUFKIN, TEXAS 75901.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge