APPEAL NO. 032213
FILED OCTOBER 1, 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 29, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant herein) sustained a compensable repetitive trauma injury with a date of injury of _____. The respondent (self-insured herein) appealed, arguing that the hearing officer erred in determining that the claimant's carpal tunnel syndrome (CTS) caused "a worsening, enhancement or acceleration of her pre-existing right wrist condition." The claimant responded, urging affirmance.

DECISION

Affirmed.

The claimant attached a medical document dated June 25, 2003, to her response that was not admitted into evidence at the hearing. 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). 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 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 on July 29, 2003, or that its inclusion in the record would probably result in a different decision. The evidence, therefore, does not meet the standard for newly discovered evidence and will not be considered.

The claimant contends that she began working for the employer on January 1, 1998, and that her job duties involved extensive typing on the computer. The clamant contends that as a result of her repetitive job duties, she sustained a repetitive trauma injury in the form of CTS with a date of injury of _____. The claimant testified that she had prior repetitive trauma injury to her wrists in the form of CTS stemming from a nonwork-related activity in 1999, and that her symptoms had resolved with therapy and exercise. The claimant contends that her current symptoms are different from her prior symptoms. The self-insured contends that the evidence does not support the claimant's contention that her job duties aggravated her preexisting CTS condition.

The Appeals Panel has held that when an injury is asserted to have occurred by way of "aggravation" of a preexisting condition, there must be evidence that there was a preexisting condition and that there was "some enhancement, acceleration, or worsening of the underlying condition. . . ." Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994. The burden of proving that there is a compensable injury or aggravation of a preexisting condition is on the claimant. The hearing officer determined that "[a]s a result of the Claimant's repetitive work activities, the Claimant sustained a worsening, enhancement or acceleration of her pre-existing right wrist condition." The Appeals Panel has held that "an aggravation of a pre-existing condition is an injury in its own right." Appeal No. 94428, *supra*. The hearing officer concluded that the claimant sustained a repetitive trauma injury in the course and scope of her employment as a result of repetitive work activities with a date of injury of _____.

Whether the claimant sustained a compensable repetitive trauma injury is a factual question for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. 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). The evidence supports the hearing officer's factual determinations. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.

For service by mail the address is:

RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge