

APPEAL NO. 032271
FILED OCTOBER 16, 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 decided that appellant (claimant) had disability commencing on November 8, 1999, and ending on November 11, 1999, and that income benefits have not accrued. Claimant requests a determination that his disability is ongoing through the date of the hearing with an accrual date of July 10, 2001. The file does not contain a response from respondent (carrier).

DECISION

We affirm.

Claimant attached notes to his appeal from his treating doctor relating that he is disabled until he has lumbar surgery and duplicates of medical records already admitted 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 at the hearing. 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. Willis, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the notes attached to the claimant's request for review and, consequently, we decline to consider them on appeal.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not 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). Claimant complains of the assistance of the ombudsman in this case. We note that it was claimant's responsibility to be sure that all exhibits he wanted in evidence were offered into evidence and to make any necessary objections. Claimant has not demonstrated grounds for reversal.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge