

APPEAL NO. 032315
FILED OCTOBER 20, 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 August 5, 2003. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant) compensable injury includes vertigo, right inner ear concussion, nasal fracture and obstruction, hearing loss, and sphenoid sinusitis, and that the claimant had disability beginning October 11, 2002, and continuing through the date of the hearing. The appellant (carrier) appealed the hearing officer's determinations based on sufficiency of the evidence grounds. The claimant responded, urging affirmance and attached to her response a letter by Dr. S to support her contention that the compensable injury extends to and includes her current conditions.

DECISION

Affirmed.

The claimant attached a letter from Dr. S to her response dated September 11, 2003. In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that is offered 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 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. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the document that the claimant attached to her response. Accordingly, we decline to consider this document on appeal.

The claimant testified that she suffered an injury to her right cheek and right knee when she tripped and fell on a sidewalk curve while she was pushing a mail cart across a street. It is undisputed that the claimant sustained a compensable injury on _____. The claimant contends that she suffers from vertigo, hearing loss, a nasal fracture and obstruction, and sinusitis as a result of her fall, and that she has not worked because of her injury since October 11, 2002. Extent-of-injury and disability are questions of fact. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to 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 regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161

(Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Although there was conflicting evidence, the hearing officer was persuaded by the medical reports and the claimant's testimony that her compensable injury extends to and includes her current conditions, and that she had disability from October 11, 2002, through the date of the hearing. 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).

The hearing officer's decision and order are affirmed.

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

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

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge