

APPEAL NO. 032591
FILED NOVEMBER 13, 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 September 2, 2003. The hearing officer determined that the compensable injury of _____, includes a cervical spine strain, lumbar spine and left knee injuries, including the diagnoses of disc herniations associated with degenerative changes at the L4-5 and L5-S1 levels of the spine, and lateral meniscus tear of the left knee and cervical strain. The Decision and Order paragraphs further provide:

DECISION

The compensable injury of _____ does include a cervical strain, lumbar spine and left knee injuries, including the diagnoses of disc herniations associated with degenerative changes at the L4-L5 and L5-S1 levels of the spine, lateral meniscus tear of the left knee and cervical strain. Thus, Claimant shall be entitled to temporary income benefits if she can establish or has established that she has had disability for eight or more days. Temporary income benefits shall continue until disability ends or maximum medical improvement is reached. Temporary income benefits accrued but unpaid shall be paid with interest in a lump sum.

The Benefit Review Officer's interlocutory order [regarding payment of medical benefits] is affirmed and superseded by this decision and order

ORDER

Carrier is ordered to pay medical and income benefits in accordance with this decision, the Texas Workers' Compensation Act and the [Texas Workers' Compensation Commission's] Rules. [Emphasis added.]

The appellant (carrier) appeals the hearing officer's extent-of-injury determination with regard to the cervical condition and a lateral meniscus tear of the left knee, on sufficiency of the evidence grounds. The carrier also complains that the hearing officer erred in requiring the payment of temporary income benefits (TIBs). The respondent (claimant) filed a response, stating that she continues to experience pain to her neck and knee. The hearing officer's determination that the compensable injury extended to the lumbar spine including the diagnosed disc herniations associated with degenerative changes at L4-5 and L5-S1 was not appealed and has become final. Section 410.169.

DECISION

Affirmed as reformed.

The claimant attached additional documentation to her response intended to support the hearing officer's extent-of-injury determination. 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). Upon our review, the additional documentation does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The hearing officer did not err in determining that the compensable injury includes a cervical spine strain and left knee injuries, including lateral meniscus tear. The determination 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)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is 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).

As stated above, the carrier complains that the hearing officer erred in requiring the payment of TIBs. We note that the matter of entitlement to TIBs was not properly before the hearing officer. Accordingly, we strike the underlined language above.

The decision and order of the hearing officer is affirmed as reformed.

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

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

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge