

APPEAL NO. 032786
FILED DECEMBER 11, 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 September 18, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury in the form of a Chiari I malformation on _____, while in the course and scope of his employment with the employer; that the claimant timely reported a claimed work-related _____, injury to his employer as required by Section 409.001; and that since the claimant did not sustain a compensable injury, he had no period of disability. The claimant appealed the adverse determinations. The respondent (carrier) responded, urging affirmance. The hearing officer's timely notice determination was not appealed and has become final. Section 410.169.

DECISION

Affirmed.

Attached to the claimant's appeal is a document that was not admitted into evidence at the CCH. Section 410.203(a) provides that the Appeals Panel shall consider the record developed at the CCH. 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. The claimant has not shown that the document that was attached to his appeal, that was not made a part of the CCH record, met the requirements to be considered as newly discovered evidence and we decline to consider it on appeal.

The claimant had the burden to prove that he sustained a compensable injury and that he had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issues. 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. The hearing officer was not persuaded that the claimant met his burden of proof that the motor vehicle accident on _____, caused or aggravated the claimant's Chiari I malformation. The hearing officer noted that the medical evidence showed that Chiari I malformation is a congenital abnormality and is not ordinarily due to trauma. 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 decision and order of the hearing officer.

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

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

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge