

APPEAL NO. 032854
FILED DECEMBER 10, 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 October 3, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not have disability. The claimant appeals these determinations and asserts that hearing officer did not consider all the medical evidence. The respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The claimant attached to her appeal two documents for the purpose of impeaching the testimony of the self-insured's witness as it relates to the number of hours worked by the claimant. 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). 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. Appeal No. 93111, *supra*; Black, *supra*. Upon our review, the evidence offered is not so material that it would probably produce a different result, nor is it shown that the documents could not have been obtained prior to the hearing below. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The hearing officer did not err in reaching the complained-of injury determination. Whether the claimant sustained a compensable injury involved a question of fact for the hearing officer to resolve. The evidence before the hearing officer was conflicting. 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)). The hearing officer specifically noted that "[t]he shoulder damage described in the MRI is described as degenerative changes in the acromioclavicular joint, impressing on the tendons, causing impingement syndrome. This is not shown to be due to injury." In view of the evidence presented, we cannot conclude that the hearing officer's determination that the claimant did not sustain a compensable injury 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 (Tex. 1986).

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

The claimant asserts that the hearing officer did not consider the medical evidence to support the claimant's contention that she sustained a compensable injury. The hearing officer states in the Statement of Evidence paragraph that, "[e]ven though all the evidence presented is not discussed, it was considered." We have previously stated that there is no requirement that the hearing officer discuss all the evidence. See Texas Workers' Compensation Commission Appeal No. 91076, decided December 31, 1991; Texas Workers' Compensation Commission Appeal No. 92185, decided June 18, 1992. The hearing officer has explained the rationale for his decision and we perceive no error.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier (**a certified self-insured**) 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.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge