

APPEAL NO. 032872
FILED DECEMBER 18, 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 24, 2003. The hearing officer determined that the respondent (self-insured) waived the right to contest compensability by not timely disputing the injury; that because of the self-insured's waiver, the appellant (claimant) sustained a compensable back injury; that the compensable back injury does not extend to a herniation at the L4-5 level with radiculitis; and that the claimant had disability only from December 14 through December 31, 2000. The hearing officer's determinations on the self-insured waiver and the compensable injury have not been appealed and have become final pursuant to Section 410.169.

The claimant appeals the extent-of-injury and disability determinations, citing medical reports. The claimant attaches documents to her appeal not offered at the CCH. The self-insured responds, urging affirmance on the disputed issues and asserts that consideration of the documents submitted for the first time on appeal would be improper.

DECISION

Affirmed.

The claimant attaches several documents to her appeal but only a doctor's report dated December 30, 2002, was offered and admitted at the CCH. Documents submitted for the first time on appeal are generally not considered unless they constitute admissible, newly discovered evidence. We conclude that these attachments to the claimant's appeal do not meet the requirements of newly discovered evidence necessary to warrant a remand. Having reviewed the documents, we conclude that its admission on remand would not have resulted in a different decision. 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).

The claimant, a "police telecommunicator/operator" asserts that she sustained the complained-of injuries trying to stop herself from falling when a chair broke on _____. The claimant was apparently being treated for a gynecological condition called endometriosis prior to _____. Immediately after the chair incident, an ambulance was called and the claimant was taken to the emergency room. By all accounts there was some confusion whether the claimant had abdominal pain due to the endometriosis or low back pain. It is relatively undisputed that the claimant was off work from December 13 through December 31, 2000. The claimant testified that she returned to work on January 1, 2001, but continued to miss some 45 to 60 intermittent days of work during the next one and a half years until her employment was terminated on April 26, 2002. The claimant saw an orthopedic specialist, who

diagnosed a resolving back sprain on April 20, 2001, and a designated doctor, who certified maximum medical improvement on April 2, 2002. Subsequently the claimant was involved in two rear end motor vehicle accidents (MVA), one in "spring" of 2002 and the other on July 4, 2002. An MRI performed on October 23, 2002, noted an L4-5 disc herniation.

The hearing officer concluded that given the lack of back complaints after spring of 2001 and the intervening MVAs in 2002, the claimant failed to prove that her L4-5 disc problem is related to the compensable injury and that the claimant's only documented time off was from the date of injury through December 31, 2000. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision is supported by sufficient evidence and 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, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CITY SECRETARY
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge