APPEAL NO. 033115
FILED JANUARY 8, 2004

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 October 27, 2003. The hearing officer determined that the Independent Review Organization's (IRO) decision is supported by a preponderance of the evidence and that the appellant's (claimant) compensable injury of _____, does not include or extend to include lumbar canal stenosis, lumbar radiculopathy, a bulging disc at L4-5, and disc pathology at L3-4. The claimant appealed the hearing officer's determinations based on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant attached a number of documents to her appeal that purport to be general internet medical articles and medical letters. Some of these documents were admitted into evidence at the CCH and some were not. First, we note that we will not generally consider evidence not submitted into the record, and raised 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 a 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). Applying this standard in this case, we will only consider the evidence admitted at the CCH as the other documents attached to the claimant's appeal were clearly in existence at the time of CCH and the claimant has made no showing of why, exercising due diligence, she could not have offered these documents at the CCH.

The hearing officer did not err in determining that the IRO's decision, denying the claimant's request for spinal surgery, is supported by a preponderance of the evidence, and that the claimant's compensable injury does not include or extend to include lumbar canal stenosis, lumbar radiculopathy, a bulging disc at L4-5, and disc pathology at L3-4. These determinations 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)). 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 claimant complains that she was not prepared to argue an extent-of-injury issue at the CCH. The record reflects that the parties consented to proceed with an extent-of-injury issue. Under the facts of this case, we perceive no error.

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.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Robert W. Potts
Appeals Judge