

APPEAL NO. 033220
FILED JANUARY 26, 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 was held on November 10, 2003. The hearing officer determined that the compensable injury of _____, extends to include a right shoulder sprain/strain but does not extend to include injuries to the cervical and thoracic spine. The appellant (claimant) appeals the hearing officer's extent-of-injury determination with regard to the cervical and thoracic spine, on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance. The hearing officer's extent-of-injury determination with regard to the right shoulder was not appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant attached additional documents to her appeal, which would purportedly show that her compensable injury extends to include the cervical and thoracic spine. 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, it is not shown that the documents could not have been obtained prior to the hearing below or that they would probably produce a different result. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered for the first time on appeal.

The hearing officer did not err in determining that the compensable injury of _____, does not extend to include injuries to the cervical and thoracic spine. This 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 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 decision and order of the hearing officer is affirmed.

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

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge