

APPEAL NO. 040024
FILED FEBRUARY 17, 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 December 9, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that the claimed injury does not include any injury to the low back; and that the respondent (carrier) is relieved from liability under Section 409.002, because of the claimant's failure to timely notify her employer pursuant to Section 409.001. The claimant appealed, asserting both evidentiary and procedural error as well as on sufficiency of the evidence grounds. The carrier urges affirmance, and objects to certain documents attached to the claimant's appeal to the extent that they were not admitted at the CCH.

DECISION

Affirmed.

On appeal, the claimant asserts that she wasn't given time to hire a lawyer; that her evidence was "not correct"; that certain issues were not brought up; that the carrier's evidence was improperly admitted; that not all of her evidence was admitted; and that she has been misled. All of the above issues are subject to waiver if they are not raised at the CCH. We have carefully reviewed the record in this case and note that the claimant did not request a continuance for any reason, that the parties agreed what the issues were; that the claimant made no objection to any of the carrier's evidence; and that all of the evidence the claimant offered was admitted without objection. As such, the claimant has waived the right to bring any of these matters up on appeal.

Attached to the claimant's appeal were numerous documents not offered into evidence at the hearing. Generally, the Appeals Panel does not consider evidence not offered at the hearing 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. Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ); Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993. We do not find that to be the case with the documents attached to the appeal, which were neither offered nor admitted into evidence at the hearing; as such they will not be considered on appeal.

Whether or not the claimant sustained a compensable injury, the extent of the injury, and whether the injury was timely reported pursuant to Section 409.001 are all questions of fact for the fact finder. Section 410.165(a) provides that the hearing officer,

as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. There was conflicting evidence in this case. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record reveals that the hearing officer's determinations regarding the disputed issues are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **UNITED STATES FIDELITY & GUARANTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge