

APPEAL NO. 040120
FILED FEBRUARY 25, 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 December 19, 2003. The hearing officer determined that the _____, compensable injury of appellant (claimant) does not include a herniated disc at lumbar level L3-4. Claimant appealed this determination on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant attached documents to her appeal that were not admitted at the hearing. 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 claimant's appeal do not meet the requirements of newly discovered evidence necessary to warrant a remand. Having reviewed the documents, we conclude that admission on remand would not result 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).

We have reviewed the complained-of determination and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is supported by the record and is not 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).

We have said that although Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)) states that Section 409.021 does not apply to an "extent of injury" dispute, the rule cannot be interpreted in a way that would simply allow a dilatory carrier to recast the primary claimed injury issue as an "extent issue" and thereby read the mandates of Section 409.021 out of existence entirely. In this case, a herniation was not shown to be part of the "claimed injury" in the medical reports created during the first two months after _____. Therefore, it does not appear that carrier was attempting to avoid the effects of the waiver in this case.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **TRANSCONTINENTAL INSURANCE COMPANY** 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.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge