

APPEAL NO. 041108
FILED JUNE 30, 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 April 19, 2004. The hearing officer resolved the disputed issue by deciding that respondent 1's (claimant) compensable injury of _____, includes depression. The appellant (carrier) appeals, contending that there is insufficient medical evidence to support the hearing officer's decision and that the Appeals Panel should consider additional medical records from the claimant's psychiatrist, which are attached to its appeal and which were not offered at the CCH because they had not been received until after the CCH. No response was received from the claimant or from respondent 2 (subclaimant).

DECISION

Affirmed.

Section 410.203(a)(1) provides that the Appeals Panel shall consider the record developed at the CCH. According to the CCH record, at the time of the CCH the carrier knew that the claimant's psychiatrist had not yet responded to its April 6, 2004, request for records covered by the claimant's medical authorization for disclosure, but did not request a continuance in order to obtain more time in which to secure those records. Under these circumstances, we decline to consider for the first time on appeal the additional records attached to the carrier's appeal, nor do we consider those records to constitute newly discovered evidence for the purpose of a remand because, had a timely request for a continuance been made and granted, the additional records could have been available to the carrier to offer at a rescheduled CCH. In addition, given the report of the claimant's psychiatrist that was in evidence, we cannot conclude that the additional records would probably produce a different result on remand. Jackson v. Van Winkle, 660 S.W.2d 807 (Tex. 1983).

The claimant had the burden of proof on the disputed issue of whether her compensable injury includes depression. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer could conclude from the psychiatrist's opinion that the claimant has depression as a result of her compensable injury. We conclude that sufficient evidence supports the hearing officer's decision and that it 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 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY 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.**

Robert W. Potts
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Chris Cowan
Appeals Judge