APPEAL NO. 041448
FILED JULY 27, 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 May 11, 2004. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____, and that the claimant has not had disability.

The claimant filed a timely appeal principally on a sufficiency of the evidence basis. About a month later the claimant submitted some additional documentation to include check stubs and an additional report from the treating doctor. The respondent (carrier) filed a response, urging affirmance.

DECISION

Affirmed.

With regard to the documentation filed on July 19, 2004, that information is untimely as a request for review. However, we note that at least two of the reports in the documentation were in the exhibits admitted at the CCH and the original exhibits were reviewed. Otherwise, our review of the case is limited to the record developed at the CCH and we will not normally consider matters submitted for the first time on appeal. We do not consider the check stubs or the treating doctor's additional report evidence to require a remand. *See* Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ) for the standard which might require a remand.

The claimant was a service agent, cleaning and servicing motor vehicles, for a car rental agency. The claimant asserts a repetitive trauma injury on _____, cleaning, vacuuming, and servicing cars. Although it is relatively undisputed that the claimant had seen a doctor for back pain in February 2003 the circumstances of that nonwork-related injury are disputed. The hearing officer determined that the evidence was insufficient to establish that the claimant's job activities were physically repetitive and traumatic. *See* Section 401.011(36) for the definition of repetitive trauma. The hearing officer also commented that the claimant's "prior condition had not resolved and the mere fact that the pain began again on _____, was insufficient to establish a new injury."

The questions of whether the claimant's work activities were sufficiently repetitive to cause the claimed injury and whether he had disability presented 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). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence has established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo

1974, no writ). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

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

JOSEPH KELLEY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Chris Cowan
Appeals Judge