APPEAL NO. 041583
FILED AUGUST 19, 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 June 14, 2004. The hearing officer resolved the disputed issues by determining that the appellant/cross-respondent (claimant) is entitled to change treating doctors to Dr. D pursuant to Section 408.022; that the respondent/cross-appellant (carrier) is not relieved from liability for treatment provided at the direction of Dr. D pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9 (Rule 126.9); that the claimant's _____, compensable injury includes a thoracic sprain/strain, but does not include a cervical sprain/strain or a herniated disc/degenerative disc disease at L5-S1; and that the claimant had disability from March 26, 2004, through the date of the hearing. The claimant appeals the portion of the extent-of-injury determination that is adverse to him and attaches new evidence to his appeal. The carrier appeals the determinations relating to disability and change of treating doctors, and presumably, the resulting effect of the change of doctor determination on the carrier's liability for treatment. The carrier responded to the claimant's appeal. The appeal file contains no response by the claimant to the carrier's appeal.

DECISION

Affirmed.

The claimant attached new evidence to his appeal, which was not offered into evidence at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. 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, the evidence offered is not so material that it would probably produce a different result. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The determinations complained of by both the carrier and the claimant involved factual questions for the hearing officer to resolve. 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 of the weight and credibility that is to be given to the evidence. 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, 702 (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, 290 (Tex. App.-Houston [14th Dist.] 1984, 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). Nothing in our review of the record indicates that the hearing

officer's decision is 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, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **GREAT AMERICAN ALLIANCE 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.

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Margaret L. Turner
Appeals Judge