APPEAL NO. 041851
FILED SEPTEMBER 16, 2001

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 July 1, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that the claimant did not have disability.

The claimant appealed, basically on sufficiency of the evidence grounds, asserting that a recorded statement he had given was when he "was on medication and . . . not totally aware of what [he] was saying." The respondent (self-insured) responds, objecting to new information in the request for review and otherwise, urging affirmance.

DECISION

Affirmed.

The claimant, for the first time, in his request for review, asserts information that he was not aware of what he was saying when he gave a recorded statement. Although inconsistencies in the recorded statement were brought out at the CCH, there was no testimony or evidence that the claimant was not aware of what he was saying. Our review of the case is limited to the record developed at the CCH and we will normally not consider statements from the claimant submitted for the first time on appeal. *See* Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ) for the standard which might require a remand. We do not find that appropriate here.

It is undisputed that the claimant is a diabetic, that he sustained some type of puncture wound to his left big toe around the end of _____, that the wound became infected, and that the claimant eventually had an amputation of his left big toe. The evidence of how the claimant sustained the initial wound is in conflict. There is evidence that the claimant said he did not know what caused the wound, other evidence that the claimant got a rock in his shoe, and the claimant's testimony that he tripped on a large piece of metal with a jagged edge which caused a puncture wound through the one inch rubber sole of his work shoe. The hearing officer noted that the claimant has "asserted various mechanisms of injury."

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury and the nature and extent of that injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the testimony and evidence before her and decides what facts have been established. Texas

Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We do not so find in this case.

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

C.G.
(ADDRESS)
(CITY), TEXAS (ZIP CODE)

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge