

APPEAL NO. 041970
FILED OCTOBER 4, 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) on remand was held on July 16, 2004. This hearing was held to reconstruct the record of the first CCH on this matter held on March 16, 2004. With respect to the issue before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not include a non-specific nerve damage in the claimant's lower right abdomen resulting in a myofascial pain trigger point. In her appeal, the claimant appeals this determination on sufficiency of the evidence grounds. There is no response from the respondent (carrier) in the appeal file.

DECISION

Affirmed.

The claimant attaches to her appeal a medical article that she sought to introduce at the CCH on remand. The carrier objected to this document as not being timely exchanged and the hearing officer did not admit the document because the hearing on remand was held for the purpose of reconstructing the record rather than taking new evidence. First, we note that we will not generally consider evidence not submitted into the record, and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. 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). The document attached to the claimant's appeal does not meet this test. Since the document was not admitted at the CCH and does not constitute newly discovered evidence, we cannot consider it on appeal.

The hearing officer did not err in determining that the claimant's compensable injury of _____, does not include a non-specific nerve damage in the claimant's lower right abdomen resulting in a myofascial pain trigger point. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, 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 or manifestly 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 **HARTFORD UNDERWRITERS 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.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Veronica L. Ruberto
Appeals Judge