APPEAL NO. 042308
FILED NOVEMBER 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 was held on August 12, 2004. The hearing officer determined that the impairment rating (IR) of appellant (claimant) is 7%, in accordance with the report of Dr. P, the Texas Workers' Compensation Commission (Commission)-selected designated doctor. Claimant appealed the IR determination, contending that her IR should be 11% as suggested by Dr. L. Respondent (self-insured) responded that the hearing officer did not err in making her determinations.

DECISION

We affirm.

Claimant attached a document to her appeal that was not admitted at the hearing and was dated after the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute admissible, newly discovered evidence. We conclude that this attachment to claimant's appeal does not meet the requirements of newly discovered evidence necessary to warrant a remand. Having reviewed the document, we conclude that admission on remand would not result in a different decision. 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).

There was no dispute that claimant reached statutory maximum medical improvement (MMI) in August 2002. Section 408.125(c) provides that the designated doctor's IR report has presumptive weight and that the Commission shall base its determination of IR on that report unless the great weight of the other medical evidence is to the contrary.

Dr. L stated that an April 10, 2003, nucleoplasty procedure should be taken into account when determining the IR. The record also reflects that claimant underwent a lumbar discography in November 2002. The record reflects that both procedures took place after claimant reached statutory MMI. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) has been interpreted to mean that the IR shall be based on the condition as of the MMI date and is not to be based on subsequent changes, including surgery. *See* Texas Workers' Compensation Commission Appeal No. 040313-s, decided April 5, 2004.

We conclude that the hearing officer's determination that the IR is 7%, as reported by the designated doctor is supported by sufficient evidence and is not against the great weight and preponderance of the evidence. We have reviewed the contentions in claimant's brief and conclude that no reversible error has been shown.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **(a certified self-insured)** 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.

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Judy L. S. Barnes
Appeals Judge

CONCUR:

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Gary L. Kilgore
Appeals Judge

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Thomas A. Knapp
Appeals Judge