

APPEAL NO. 031087
FILED JUNE 17, 2003

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 April 4, 2003. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) compensable injury of _____, included an injury to the cervical and thoracic spine. The appellant (carrier) appealed on sufficiency of the evidence grounds. The claimant responded and attached some documents to his response that were not in evidence at the hearing.

DECISION

Affirmed.

The claimant attached several documents to his response that were not offered into evidence at the hearing, as well as duplicates of some documents that were offered into evidence. The review of the Appeals Panel is generally limited to the record developed at the hearing. Section 410.203. In determining whether new evidence submitted with an appeal requires remand for further consideration, the Appeals Panel considers whether the evidence came to the knowledge of the party after the hearing, whether it is cumulative of other evidence of record, whether it was not offered at the hearing due to a lack of diligence, and whether it is so material that it would probably result in a different decision. See Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. Under these circumstances, we cannot conclude that the attached documents meet the criteria for requiring a remand and we decline to consider them for the first time on appeal.

The hearing officer did not err in determining that the claimant's compensable injury of _____, included an injury to the cervical and thoracic spine. Extent of injury is a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). In this instance, the hearing officer was persuaded by the claimant's testimony and the medical report dated February 19, 2002, that the claimant's compensable injury extended to the cervical and thoracic spine. When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust, and we do not find it so in this case. Cain v.

Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

**ROBERT SIDDONS
11612 RM 2244, BUILDING 1
AUSTIN, TEXAS 78738.**

Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge