

APPEAL NO. 033094
FILED JANUARY 12, 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 November 6, 2003. The hearing officer resolved the disputed issue by deciding that as a result of the _____, compensable injury, the appellant (claimant) did not have disability from December 14 through December 15, 2002, or from May 12, 2003, through the date of the hearing. The claimant appeals this determination. The respondent (carrier) urges affirmance of the hearing officer's decision

DECISION

Affirmed.

Whether the claimant had disability during the periods in question was a factual question for the hearing officer to resolve. 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)). 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). The hearing officer was not persuaded by the evidence that the claimant met his burden of proof on the disability issue. 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 claimant argues that the hearing officer incorrectly states in his decision that the claimant could not be "paid disability until the total number of days of disability is '28 days or more.'" Based on his determination that the claimant did not have disability, the hearing officer noted that the claimant is not entitled to temporary income benefits (TIBs) and that TIBs are not paid for the first seven days of disability until there are at least 28 days of disability. The hearing officer's statement accurately reflects the provisions contained in Section 408.082 and is not erroneous.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge