

APPEAL NO. 040251
FILED MARCH 17, 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 January 8, 2004. The hearing officer determined that the employer did not tender a bona fide offer of employment (BFOE) to the appellant (claimant); that the claimant had disability from June 15 to June 28, 2003, resulting from the compensable injury sustained on _____; and that the claimant did not have disability from June 29 to October 22, 2003. The claimant appeals the determination that she did not have disability from June 29 to October 22, 2003, on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance. The determination that the employer did not tender a BFOE to the claimant has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

We have reviewed the complained-of disability determination and find that the hearing officer did not err in determining that the claimant did not have disability from June 29 to October 22, 2003. The issue presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence, including the medical evidence. Section 410.165(a); Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer simply was not persuaded that the claimant met her burden of proving that her disability continued after June 28, 2003. Although there was conflicting evidence in the record, the hearing officer found the surveillance video persuasive in showing that the claimant was able to use her left upper extremity. She found that the claimant's testimony was not credible and medical records from the treating doctor were contradicted by the claimant's activities on the video. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge