APPEAL NO. 041037
FILED JUNE 18, 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 April 7, 2004. The hearing officer determined that the appellant's (claimant) compensable left knee injury of _____, extends to and includes left knee chondromalacia but does not extend to include perimeniscal cysts, patella subluxation, osteoarthritic changes, and/or a meniscus tear, and that the claimant did not have disability.

The claimant appealed, asking us to review the medical records and reports of his current treating doctor, a respondent (carrier) required medical examination (RME) doctor, and a referral doctor, contending that the hearing officer failed to consider his medical evidence. The claimant also asserts that a surveillance report is "false." Although not specifically appealed, we consider the claimant's request for review also an appeal of the disability issue. The carrier responds, urging affirmance.

DECISION

Affirmed.

The claimant sustained a compensable left knee injury on _____, when he tripped over an air hose and twisted his left knee. The claimant testified that he saw his first treating doctor on August 23, 2003 (although the medical record is dated August 27, 2003). The claimant was diagnosed with a left knee strain and released to regular duty. The claimant continued to work, either in a light duty status or regular duty. The claimant was seen by a number of doctors including two referral doctors, a carrier RME doctor, a designated doctor, and finally Dr G, the claimant's second treating doctor. A referral doctor, the carrier's RME doctor, and Dr. G all diagnosed the chondromalacia made part of the compensable injury. Other reports note or suggest that the claimant may have, or does have the other conditions, however, the hearing officer noted that there is a lack of causal connection between the compensable injury and the other claimed conditions. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

On the issue of disability all the doctors had released the claimant to at least light duty and the claimant had continued to work light duty at his preinjury wage until November 20, 2003, when the claimant says Dr. G took him off duty. The hearing officer notes that the claimant's medical condition had not changed. The claimant disputes a surveillance report of September 13, 2003, which indicates the claimant was helping lift a 75 pound "barbeque pit." One of the referral doctors commented in a

report dated October 14, 2003, that the claimant asked to be taken off work because "I can make more money with my insurance programs." Whether the claimant has disability as defined in Section 401.011(16) is a question of fact for the hearing officer to resolve. The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officers' decision and order 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**.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Chris Cowan
Appeals Judge