APPEAL NO. 041123
FILED JULY 5, 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 14, 2004. The hearing officer resolved the disputed issues by determining that the respondent/cross-appellant (claimant) is entitled to supplemental income benefits (SIBs) for the second quarter and that his _____, compensable injury does not extend to or include his shoulders, right leg, depression, or cervical, thoracic or lumbar spine. The appellant/cross-respondent (carrier) appeals the SIBs determination. The claimant appeals the extent-of-injury determination. The carrier responded to the claimant's appeal, urging affirmance of the extent-of-injury determination.

DECISION

Affirmed.

Extent of injury 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 it is for the hearing officer to resolve such conflicts and inconsistencies in the evidence as were present in this case (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, 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's compensable injury included the condition and body parts alleged. Nothing in our review of the record indicates that the hearing officer's extent-of-injury determination 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).

Section 408.142 provides that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with his ability to work. The carrier asserts that the hearing officer erred in determining that the claimant satisfied both of the aforementioned requirements for SIBs. We have stated that a finding of direct result is sufficiently supported by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. To meet the direct result requirement, one only need prove that the unemployment or underemployment was a direct result of the compensable injury. *See* Texas Workers' Compensation Commission Appeal No. 001786, decided September 13, 2000. Given the evidence in this case, we perceive no error in the hearing officer's determination that the claimant's unemployment during the

qualifying period corresponding to the second quarter was a direct result of his impairment from the compensable injury.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), relied upon by the claimant for SIBs entitlement, states that the good faith criterion will be met if the employee:

> has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

A finding of no ability to work is a factual determination for the hearing officer. The hearing officer found that the claimant was unable to work during the second quarter qualifying period; that he provided a narrative from Dr. E, which satisfied the requirements of Rule 130.102(d)(4); and that no other credible records showed that the claimant had an ability to work during the qualifying period. The mere existence of a medical report stating the claimant had an ability to work does not mandate that a hearing officer find that other records showed an ability to work. Texas Workers' Compensation Commission Appeal No. 000302, decided March 27, 2000. The hearing officer could find from the evidence that Dr. X report dated February 17, 2004, was not credible because it was generated after the expiration of the second quarter qualifying period. The hearing officer's determination that the claimant satisfied the good faith criterion for SIBs entitlement is supported by the evidence and not subject to reversal on appeal. Cain, *supra*.

The claimant argues in his appeal that the hearing officer failed to list and admit all of his evidence. The record reflects that the claimant offered, and the hearing officer admitted, Claimant's Exhibit Nos. 1-10. We find no merit in the assertion that not all of the claimant's exhibits were admitted. Section 410.168 and Rule 142.16(a) require only that the hearing officer make findings of fact, conclusions of law, determine whether benefits are due, and award benefits. Accordingly, a list detailing the exhibits admitted is not required in a decision and order and does not indicate a failure on the part of the hearing officer to consider the evidence admitted at the hearing.

The hearing officer's 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
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Margaret L. Turner
Appeals Judge