

APPEAL NO. 000886

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 October 20, 1999. The Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 000226, decided March 22, 2000, remanded the case to the hearing officer to make findings of fact which address whether the conditions of the appellant's (claimant) hands, at or above the wrists, are such that she cannot get and keep employment requiring the use of such members. No further hearing was necessary and none was held. The hearing officer determined that the claimant is not entitled to lifetime income benefits (LIBs). The claimant appeals the hearing officer's finding that the claimant could get and keep employment requiring the use of her hands at or above the wrists, urging that the preponderance of the evidence supports her position. The respondent (carrier) replies that the hearing officer's decision is supported by sufficient evidence and should be affirmed. The hearing officer's finding that the claimant does not have the total and permanent loss of use of both hands as a result of the compensable injury of _____, in that the claimant's hands possess substantial utility as members of the body, has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant sustained a compensable injury to both upper extremities on _____, as a result of repetitive packing on an assembly line. The claimant was diagnosed with carpal tunnel syndrome and subsequently had approximately 12 surgeries--seven surgeries on her right upper extremity and five surgeries on her left upper extremity. The surgeries included a right carpal tunnel release, right pronator release of the median nerve, right supinator release of the radial nerve, a cubital tunnel release with transposition of the ulnar nerves, a left pronator release, left cubital tunnel release on two occasions, and a left carpal tunnel release. The claimant testified that she is unable to hold or grip things with either hand; that she has constant numbness, swelling, and burning pain in both arms; that she requires help at times to wash her hair; that there are days that she cannot open a door; that she smokes and can sometimes light her own cigarettes; and that she is able to dress herself and tie her shoes.

The claimant's treating doctor, Dr. W, testified that the claimant has developed recurrent entrapment of the median nerve at the wrist bilaterally, entrapment of the ulnar nerve at the elbow bilaterally, radial tunnel entrapment bilaterally with radiosensory nerve entrapment on the top of the hands bilaterally, and brachial plexus entrapment at the thoracic outlet bilaterally. According to Dr. W, the claimant can perform minimal gripping, but if she gets pain in her hands, she drops any object that she is trying to hold. Dr. W testified that the claimant has difficulty recognizing heat and cold; she cannot write well; she cannot hold a book well with her left hand; and she has difficulty turning doorknobs. Dr. W admitted that the claimant can turn the pages of a book with her left hand, is able

to use a lighter and pick up a cigarette, is able to bathe and wash herself, and is able to wash clothes. Dr. W opines that the claimant would not be able to get employment and maintain employment for any length of time that would require the use of her hands. According to Dr. W, the claimant is not a candidate for retraining because she cannot do gripping and grasping repeatedly, and almost any kind of light-duty or sedentary job would require gripping and grasping of the hands.

The carrier argues that the claimant has the ability to perform work with both hands, despite a limitation that it be nonrepetitive use. The carrier had the claimant examined by Dr. O on May 4, 1999, who performed a functional capacity evaluation (FCE). Dr. O states that the claimant's "primary problem is iatrogenic and that she has had excessive surgery" and that the claimant has evidence of reflex sympathetic dystrophy. The FCE indicated that the claimant could do a maximum lift of 50 pounds from the floor, only approximately 18 pounds from the shoulder above her head, and could do 16 pounds frequent lifting; she could sit for at least two hours at a time; and she could stand for at least two hours at a time. Dr. O states that the claimant demonstrated an ability to perform a "light duty job without repetitious use of the upper extremities."

Section 408.161(a)(3) provides that LIBs are paid until the death of the employee for the loss of both hands at or above the wrist. Section 408.161(b) provides that the loss of use of a body part is the loss of that body part for purposes of subsection (a). In Texas Workers' Compensation Commission Appeal No. 94689, decided July 8, 1994, we stated that the standard for determining whether a claimant is entitled to LIBs under the 1989 Act is the same as it was under the old law. Citing Travelers Ins. Co. v. Seabolt, 361 S.W.2d 204, 206 (Tex. 1962), we noted that the test for total loss of use is whether the member (here the claimant's hands) possesses any substantial utility as a member of the body or whether the condition of the injured member is such that it keeps the claimant from getting and keeping employment requiring the use of the member. The only issue before us is whether the claimant met the second prong of the Seabolt test.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The hearing officer considered all of the evidence and gave Dr. O's opinion more weight than that of Dr. W. In doing so, the hearing officer did not apply an improper standard. Previous hearing officer decisions found the claimant entitled to supplemental income benefits (SIBs) for the sixth, eighth, ninth and tenth quarters based upon a finding that the claimant had no ability to work; however, such decisions do not compel the conclusion that the claimant is entitled to LIBs. The statutory requirements for SIBs are different from that of LIBs and SIBs entitlement is determined quarterly. Unlike SIBs, entitlement to LIBs is based on loss of use of a specific body member. The hearing officer considered all of the evidence and determined that the conditions of the claimant's hands, at or above the wrists, are such that she can get and keep employment requiring the use of such members. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the

evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Applying this standard of review to the record of this case, we find the evidence sufficient to support the hearing officer's decision that the claimant is not entitled to LIBs.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge