

## APPEAL NO. 001867

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 July 25, 2000. The hearing officer determined that the appellant (claimant) is not entitled to lifetime income benefits (LIBs). Claimant appealed this determination on sufficiency grounds. The file did not contain a response from respondent self-insured ("carrier" herein).

### DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she is not entitled to LIBs. Claimant challenges only the sufficiency of the evidence, asserting that she "proved beyond the preponderance of the medical evidence that she has a total inability to gain and retain employment."

It was undisputed that claimant sustained a compensable injury on \_\_\_\_\_. Claimant testified that she injured her neck and subsequently underwent surgery. She asserted that she is entitled to LIBs because, due to her injury, she suffered a total loss of use of her hands such that she cannot get and keep employment requiring the use of her hands. Claimant testified that she is having problems with her neck and shoulder, that her hands are numb and she cannot feel them, that her doctor took her off work, and that she is not able to get and keep employment in her current condition.

Section 408.161(a)(3) states that LIBs are paid until the death of the employee for, among other things, loss of both hands at or above the wrist. Section 408.161(b) states that for the purposes of 408.161(a), the total and permanent loss of use of a body part is the loss of that body part. "Total loss of use" of a member of the body exists whenever by reason of injury such member no longer possesses any substantial utility as a member of the body or the condition of the injured member is such that the worker cannot get and keep employment requiring the use of such member. Texas Workers' Compensation Commission Appeal No. 94689, decided July 8, 1994; Texas Workers' Compensation Commission Appeal No. 000417, decided March 31, 2000.

The hearing officer determined that claimant failed to provide sufficient evidence to satisfy the requirements of Section 408.161. The hearing officer also determined that "[t]he condition of claimant's arms, as a result of her compensable spinal injury, is not such that she has lost substantial use of her arms and is not such that she cannot get and keep employment." There was evidence from claimant's treating doctor, Dr. P, dated in May 2000, that claimant was "unable to return to any gainful employment permanently." The medical evidence from 1996 and before indicated that claimant had severe pain and some numbness in her upper extremities.<sup>1</sup> The hearing officer reviewed the evidence,

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<sup>1</sup>Most of claimant's medical evidence was dated in 1996 and before.

determined what weight to give the evidence, and decided what facts were established. We have reviewed the evidence in this case and we conclude that the hearing officer's determinations regarding LIBs are not 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).

We affirm the hearing officer's decision and order.

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Judy L. Stephens  
Appeals Judge

CONCUR:

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Kathleen C. Decker  
Appeals Judge

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Robert W. Potts  
Appeals Judge