

APPEAL NO. 002155

Following a contested case hearing held on August 22, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by determining that the appellant (claimant) is not entitled to lifetime income benefits (LIBs). The claimant appeals "each and every finding of fact and conclusion of law decided by the Hearing [sic] that is against the Claimant." The claimant fails to delineate which findings of fact are complained of, but for the sake of this appeal we will treat the claimant's appeal as an appeal of the sufficiency of the evidence. There is no response from the respondent (self-insured) in the file.

DECISION

Affirmed.

The case before the hearing officer was whether the claimant was entitled to LIBs. The provision of the 1989 Act controlling LIBs is Section 408.161 which provides, in relevant part, as follows:

Sec. 408.161. [LIBs]. (a) [LIBs] are paid until the death of the employee for:

- (1) total and permanent loss of sight in both eyes;
 - (2) loss of both feet at or above the ankle;
 - (3) loss of both hands at or above the wrist;
 - (4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist;
 - (5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; or
 - (6) an injury to the skull resulting in incurable insanity or imbecility.
- (b) For purposes of Subsection (a), the total and permanent loss of use of a body part is the loss of that body part.

In our decision in Texas Workers' Compensation Commission Appeal No. 94689, decided July 8, 1994, we held that the legal test for total loss of use had not changed from prior law and that the proper standard is as follows:

"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.

The evidence offered by the claimant at the hearing concerned only an injury to, and the purported loss of use of, his right arm. Even were we to find, which we do not, that the hearing officer erred in finding that the claimant had not lost the use of his right arm, there was absolutely no evidence that the claimant did not have the full use of his left arm and both legs. We find no error at all in the hearing officer's determination that the claimant is not entitled to LIBs.

There being no reversible error in the record, the decision and order of the hearing officer are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge