

## APPEAL NO. 002518

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 10, 2000. The hearing officer determined that the appellant (claimant) is not entitled to lifetime income benefits (LIBs). Claimant appealed this determination on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

### DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he is not entitled to LIBs. Pursuant to Section 408.161(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) for certain injuries to the brain or skull. Section 408.161(b) states that, for purposes of subsection (a), the total and permanent loss of use of a body part is the loss of that body part. The test for total loss of use is whether the member 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. Texas Workers' Compensation Commission Appeal No. 94689, decided July 8, 1994. The question of whether a claimant has suffered a total loss of use of a member is generally a question of fact for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 952099, decided January 24, 1996.

Medical records indicate that claimant was diagnosed with chronic obstructive pulmonary disease after inhaling sulphur dioxide gas in 1992. Claimant testified that his wife assists him in walking to the bathroom, and that she shaves and bathes him. Dr. W testified that claimant's extremities are very weak due to claimant's pulmonary condition and limited oxygen. Dr. W said claimant can feed himself, but that he is so limited that he does not believe claimant can work. Dr. A testified that claimant has been hospitalized frequently; that his condition has probably worsened over time; that claimant is very weak and short of breath; and that it exhausts him to walk across the room.

The hearing officer was the sole judge of the credibility of the evidence under Section 410.165(a) and she resolved the conflicts and inconsistencies in the evidence. She determined that claimant did not sustain his burden of proving her entitlement to LIBs pursuant to Section 408.161. We have reviewed the evidence and we conclude that the hearing officer's determination is 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