

APPEAL NO. 002893

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 20, 2000, a hearing was held. The hearing officer decided that the appellant (claimant) is not entitled to lifetime income benefits (LIBs). The claimant appeals, asserting the insufficiency of the evidence and the respondent (self-insured) urges the sufficiency of the evidence.

DECISION

Affirmed.

The hearing officer did not err in deciding that the claimant is not entitled to LIBs. The claimant testified that following his lumbar spine injury on _____, he underwent lumbar spine surgery in April 1996; that he has since had constant pain in his low back and legs which he controls with medication and a TENs unit; that he uses a cane when walking all but short distances; that he drives for short distances; that he performs various household tasks such as laundering and meal preparation; that he has not worked since his surgery; that he quit college after a year of taking courses because of his pain; and that he cannot work because of his pain. The claimant could point to no evidence indicating that he has permanent and complete paralysis of both legs. See Section 408.161(a)(5).

Section 408.161 establishes the statutory requirements for entitlement to LIBs. The legal principles applicable to LIBs cases are discussed in Texas Workers' Compensation Commission Appeal No. 941190, decided October 17, 1994, including the holding in Travelers Insurance Company v. Seabolt, 361 S.W.2d 204 (Tex, 1962) that the correct standard in determining entitlement to LIBs is whether the body parts involved, legs in this case, "no longer possess any substantial utility as members of [her] body or whether the condition of her [hands] is such that she cannot get and keep employment requiring the use of [hands]." The claimant relied on the latter prong of this standard.

The claimant had the burden to prove that he is entitled to LIBs. The testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate-reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly

unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge