

APPEAL NO. 010124

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 11, 2001. The hearing officer determined that the appellant (claimant) is not entitled to lifetime income benefits (LIBs). The claimant appealed, contending that the medical evidence showed that "he has total inability to gain and retain employment" because of the compensable injury. The respondent (carrier) responded, urging that the claimant's appeal had not properly been filed, and otherwise urges affirmance.

DECISION

Affirmed.

We reject the carrier's contention that the claimant failed to invoke the jurisdiction of the Appeals Panel because the claimant filed his appeal by facsimile transmission rather than mail. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) simply establishes a presumption of timely filing by mail but does not limit filing to mailing and a request for review can be filed in any one of a number of ways, including hand delivery.

Regarding the appealed issue, we hold that the hearing officer did not err in finding that the claimant is not entitled to LIBs.

The claimant sustained a low back, coccyx, and unspecified psychological injury when he fell off a grader. The claimant has not had surgery. At the CCH, the carrier represented that the claimant was currently going through the supplemental income benefits process. In evidence are reports from Dr. M, the claimant's treating doctor, stating that the claimant "is totally and permanently disabled secondary to his severe back pain." There are also reports and records from Dr. B, the carrier's doctor, indicating that the claimant can perform light to sedentary-type duties. Several doctors and at least one other hearing officer have found that the claimant has some ability to work.

The claimant asserts entitlement to LIBs based on Section 408.161(a)(2) and (5). Section 408.161(a)(2) provides that LIBs are paid until the death of the employee for the loss of both feet at or above the ankle. Section 408.161(a)(5) provides that LIBs will be paid for an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg. 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, 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 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. In Texas Workers' Compensation Commission Appeal No. 952100, decided January 23, 1996, we noted that the Seabolt test is disjunctive and that a claimant need only satisfy one prong of the test

in order to establish entitlement to LIBs. There was no evidence that the claimant had lost the use of both feet at or above the ankle and the claimant testified that he walked around his yard for exercise and can, on occasion, drive. Similarly, there was no evidence of any paralysis and Dr. M bases his opinion of the claimant's inability to work on low back pain. The hearing officer's findings that the claimant has failed to establish entitlement to LIBs based on a lack of any specific condition in Section 408.161 is supported by the evidence.

The hearing officer's decision is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge