

APPEAL NO. 010353

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 18, 2001, a hearing was held. On the sole issue, the hearing officer determined that the appellant (claimant) was not entitled to lifetime income benefits (LIBs). The claimant urges reversal, asserting that the hearing officer applied the wrong legal standard in reaching his decision. While asserting a different legal standard than the claimant, the respondent (carrier) contends that the evidence and findings sufficiently support the hearing officer's decision with regard to the standard put forth by the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was not entitled to LIBs. It further appears to us that he applied the correct legal standard. The claimant asserted that he suffered a loss of the use of his legs as a result of chronic radiculopathy from his compensable injury. The carrier asserted that the claimant's problems are the result of an injury to his spine and should be evaluated under Section 408.161(a)(5), which provides, in pertinent part, that LIBs are payable for an injury to the spine that results in permanent and complete paralysis of both legs. In Texas Workers' Compensation Commission Appeal No. 94689, decided July 8, 1994 (citing Travelers Insurance Co. v. Seabolt, 361 S.W.2d 204, 206 (Tex. 1962)), a case much like this one, we held that the correct standard in determining whether the claimant is entitled to LIBs is whether the legs no longer possess any substantial utility as members of the body or whether the condition of the legs is such that claimant cannot get and keep employment requiring the use of the legs. See *also* Texas Workers' Compensation Commission Appeal No. 000754, decided May 24, 2000. We have noted that this test is disjunctive and that a claimant need only satisfy one prong in order to establish entitlement to LIBs. Texas Workers' Compensation Commission Appeal No. 952100, decided January 23, 1996. Whether or not the claimant suffered such loss is a factual matter for the hearing officer.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer could infer from the evidence, as he did, that the claimant's legs possess some utility and also do not prevent the claimant from obtaining and retaining employment requiring the use of his legs. The Appeals Panel will not disturb the hearing officer's findings 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).

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge