APPEAL NO. 010854

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 March 26, 2001. The hearing officer determined that the respondent (claimant) is entitled to lifetime income benefits (LIBs) based on the permanent loss of use of both feet at or above the ankle.

The appellant (self-insured) appeals, citing various Appeals Panel decisions, and asserting that the quality of the medical evidence does not support the hearing officer's decision. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed at (employer) as a technician therapist. The parties stipulated that the claimant sustained a compensable injury on _____, when a wheelchair hit both of her knees. According to the medical records, primarily the claimant's left knee was injured. Another report from Dr. W, an independent medical examination doctor, states that the claimant "has an extremely long, involved history" and that from the claimant's "left knee injury she has gone to total body failure and has pain . . . with both arms and both knees." The claimant had arthroscopic surgery on her left knee in February 1993 and was diagnosed with reflex sympathetic dystrophy (RSD) in May 1993, although whether, in fact, the claimant has RSD is in dispute. The claimant began using crutches in 1994 and she asserts that her condition has continued to deteriorate. The claimant asserts that she is currently confined to a wheelchair. The claimant had additional knee surgery in December 2000.

At issue is whether the claimant is entitled to LIBs. The hearing officer found the claimant was entitled to LIBs based on Section 408.161(a)(2) and (b). 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(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.

In this case, the medical evidence is conflicting. Dr. S, who evaluated the claimant in 1995 for an impairment rating evaluation, opined that the claimant did not have RSD. The self-insured argues that the claimant had bilateral knee surgery on December 20, 2000, and why "perform knee surgery on a woman who had no hope of using her legs due

to RSD." Both parties cite Dr. W's comprehensive report of January 26, 2001. The self-insured argues that Dr. W "admits his puzzlement over the claimant's alleged inability to use her legs" and that Dr. W says that the claimant's case is "nowhere nearly as bad as many cases I have seen." The claimant points to responses Dr. W gave saying that the claimant's treatment "seems very inappropriate," that the claimant "has a variant of [RSD]," and that Dr. W answered "Yes" to the question "Has [claimant] sustained a loss of use of her legs at or above the feet?" The claimant also points to a report dated January 31, 2001, from Dr. HH, which states:

> It would be my opinion that her knees and lower extremities no longer have any substantial utility as members of the body. She would not be able to get and keep employment requiring the use of her legs. This condition is permanent. I base that on findings at the time of surgery, as well as her past history in regard to her functional capabilities in both lower extremities.

Also in evidence are questionnaires completed on October 30, 2000, and a form dated January 10, 2001, by Dr. PH stating that the claimant's left and right lower extremities do not possess any substantial utility as a member of the body due to "RSD," and that the claimant has "weakness & pain" and "requires a wheelchair to get around."

With the evidence in conflict, it is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)) to resolve those conflicts (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)) and this applies equally to medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We hold that the hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Accordingly, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge