

APPEAL NO. 011029  
FILED JUNE 11, 2001

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 April 25, 2001. The hearing officer determined the single issue of whether the appellant (claimant) is entitled to lifetime income benefits (LIBs) based upon incurable insanity or imbecility adversely to the claimant. The claimant has submitted a request for review which will be treated as an appeal on sufficiency of the evidence grounds. The respondent (carrier) has submitted a response, and urges that the hearing officer be affirmed.

DECISION

Affirmed.

Section 408.161(a)(6) provides that LIBs are paid until the death of the employee for an injury to the skull resulting in incurable insanity or imbecility (provision effective for compensable injuries occurring on or before September 1, 1997). The claimant sustained, among other serious injuries, a compensable injury to his skull on \_\_\_\_\_. Records admitted at the CCH show that the claimant has an impairment rating of 54% as a result of his various injuries. The hearing officer asked the claimant some questions at the beginning of the CCH and learned that the claimant does not have a court-appointed guardian and he has never been ordered hospitalized for a mental condition. From the evidence before him, the hearing officer determined that the claimant is not an imbecile. The hearing officer further determined that the claimant is not a danger to himself or others, the claimant is able to provide food, clothing, and shelter for himself, care for his physical health, and go shopping. Those determinations are supported by evidence in the record.

The foregoing evidence comes primarily from Dr. B, the claimant's treating doctor. Dr. B has been the claimant's treating doctor for several years. He is a neurologist with some training in psychiatry, but he is not a psychiatrist and does not claim to be one. Dr. B testified at the CCH via telephone. He believes that the claimant has a personality disorder of the paranoid type. Dr. B related his knowledge that the claimant has not cashed workers' compensation checks for several years because he believes the checks are not properly made out and that his legal rights would be affected if he did cash the checks. Dr. B has received thousands of pages of correspondence from the claimant over the years, which set forth the claimant's disagreements with what has happened and is happening with the claimant's case. The claimant annotates all correspondence he receives with his own comments about his claim; Dr. B opined that, while portions of the comments make sense, overall they do not and the comments show the claimant to be delusional in that he has false beliefs about the medical and legal systems. Dr. B believes the claimant's condition to be incurable, although the claimant is not currently undergoing psychiatric treatment, is not taking any antipsychotic medications at this time, and took Mellaril™, the least powerful antipsychotic medication, for only three months or less. Dr.

B has referred the claimant for psychiatric evaluation three times; the claimant never went to the referrals. Dr B. was also aware that the claimant did not go to a Texas Workers' Compensation Commission directed psychiatric evaluation which was scheduled just before the CCH.

The claimant had the burden of proving entitlement to LIBs. The hearing officer's determination that he did not do so is fully supportable considering the evidence in the record. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion for that of the hearing officer.

To summarize, the evidence before the hearing officer was insufficient to establish that the claimant's injury to the skull resulted in incurable insanity or imbecility, such as to make the claimant entitled to LIBs. Because the claimant has refused to cooperate with referrals and directives for psychiatric evaluation in order to provide the hearing officer with a complete evaluation of the claimant's mental status, the hearing officer's decision was the only one that he could make, and we, likewise, must affirm the decision and order of the hearing officer that the claimant is not entitled to LIBs at this time.

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Michael B. McShane  
Appeals Judge

CONCUR:

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Robert E. Lang  
Appeals Panel  
Manager/Judge

Robert W. Potts  
Appeals Judge