

APPEAL NO. 011034
FILED JUNE 26, 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 was held on April 24, 2001. The hearing officer determined the sole issue of whether the appellant (claimant) is entitled to lifetime income benefits (LIBs) adversely to the claimant. The claimant has appealed on sufficiency of the evidence grounds. The respondent (carrier) urges that the determination of the hearing officer be affirmed.

DECISION

Affirmed.

The claimant has taken the position that she is entitled to LIBs under Section 408.161(a)(3) because she has "loss of both hands at or above the wrist." Subsection (b) provides: "For purposes of Subsection (a), the total and permanent loss of use of a body part is the loss of that body part." We have previously discussed this issue, stating as follows in Texas Workers' Compensation Commission Appeal No. 000226, decided March 22, 2000:

In Texas Workers' Compensation Commission Appeal No. 94689, decided July 8, 1994, we stated that the standard for determining whether a claimant is entitled to LIBS under the 1989 Act is the same as it was under the old law. 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 (here the claimant's hands) 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. See *also* Texas Workers' Compensation Commission Appeal No. 941065, decided September 21, 1994. [Emphasis added.]

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The question of whether a claimant has suffered a **total loss of use** of a member is generally a question of fact for the hearing officer to resolve. Appeal No. 952100, *supra*; Texas Workers' Compensation Commission Appeal No. 952099, decided January 24, 1996; Texas Workers' Compensation Commission Appeal No. 941618, decided January 17, 1995. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex.

1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

In this case, the hearing officer determined that the claimant had some use of both of her upper extremities, and that she has the ability to work at the sedentary to light physical demand level with limited use of her right hand. These factual determinations are fully supported by the evidence, as is the finding that the claimant's condition is not such that she has lost substantial use of her hands at or above the wrists and is not such that the claimant cannot get and keep employment.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge