

APPEAL NO. 011038
FILED JUNE 14, 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 March 20, 2001. The hearing officer determined that the appellant (claimant) is not entitled to lifetime income benefits (LIBs) because his skull injury of _____, did not result in incurable insanity or imbecility pursuant to Section 408.161(a)(6) of the 1989 Act. The claimant appealed the hearing officer's determination, asserting that the great weight of the evidence establishes that the claimant's skull injury resulted in "imbecility" as that term is used in the statute. No response was received from the respondent (carrier).

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to LIBs. For compensable injuries occurring on or before September 1, 1997, 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." In Texas Workers' Compensation Commission Appeal No. 961340, decided August 21, 1996, a case involving entitlement to LIBs based on incurable imbecility, the Appeals Panel noted:

BLACK'S LAW DICTIONARY 749 (6th ed. 1990) refers the reader to the definition of insanity for a definition of imbecility; that DORLAND'S [ILLUSTRATED MEDICAL DICTIONARY 105 (28th ed. 1994)] at 820 defines imbecility as the condition of being an imbecile; moderate or severe mental retardation; and that WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY (1991) . . . defines imbecile as a mentally deficient person, especially a feebleminded person having a mental age of three to seven years and requiring supervision in the performance of routine daily tasks or caring for himself.

The hearing officer noted that the claimant was found to be oriented as to person, place, and time, and functioning at the low end of the average range of intelligence. We see no evidence in the record that the claimant has a court-appointed guardian or that he has been hospitalized or institutionalized for a mental condition.

There was a conflict in the medical evidence before the hearing officer regarding the issue of imbecility. Dr. M, a board certified psychiatrist, in a June 28, 2000, forensic psychiatric evaluation, opined that the claimant's skull injury caused imbecility in the sense that the claimant could engage in simple, nonwork-related activities, but that he could not function in a work environment. Dr. P, a clinical and neuropsychologist, disagrees because the claimant has an IQ in the low average range, as demonstrated by a number of clinical psychological tests. 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)). We cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed. The claimant has not met his burden of establishing entitlement to LIBs at this time.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge