

APPEAL NO. 011322
FILED JULY 30, 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 May 22, 2001. The hearing officer determined that the appellant (claimant) is not entitled to lifetime income benefits (LIBs) based on total and permanent loss of both feet. The claimant argues on appeal that the hearing officer erred in making this determination. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

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). The claimant maintains that he is eligible for LIBs because he has lost the use of both of his feet as a result of his compensable injury. 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 feet) 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. We are satisfied that the disputed findings are sufficiently supported by the evidence and are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, we affirm the decision and order of the hearing officer.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge