

APPEAL NO. 011856  
FILED SEPTEMBER 25, 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 July 3, 2001. The appellant/cross-respondent (carrier) appeals the hearing officer's determination that the respondent/cross-appellant (claimant) is entitled to lifetime income benefits (LIBs) based on an injury to the skull that resulted in incurable imbecility. The claimant appeals the hearing officer's determination that "there [was] no specific [diagnosis] of skull fracture, or other physical damage to the bony structure of the claimant's head and no invasive procedure was performed that caused damage to the bony structure of the claimant's head" and the hearing officer's determination that the "claimant does not have any psychotic features to his mental dysfunction."

DECISION

Reversed and rendered.

It is undisputed that the claimant sustained a compensable injury when he fell off a horse at work on \_\_\_\_\_. The horse reared up, striking the claimant's head, causing him to fall off the horse, hitting his head on the ground. The claimant was diagnosed with a closed head injury. From the evidence it is apparent that the claimant has had and continues to have significant psychological/psychiatric conditions, the extent being a matter of dispute. However, the issue in this case focuses on the statutory provisions regarding entitlement to LIBs for specifically enumerated conditions. Although there was an amendment to the 1989 Act for injuries effective on or after September 1, 1997, Section 408.161(a)(6), in effect on the date of injury in this case, provides that lifetime income benefits are paid until the death of the employee for . . . "(6) an injury to the skull resulting in incurable insanity or imbecility. [Emphasis added.]"

Section 408.161(a)(6) was the subject of the Appeals Panel decision in Texas Workers' Compensation Commission Appeal No. 951336, decided September 20, 1995, (a lightning strike case) where the panel stated "[W]e believe that a plain, or even a technical and medical, interpretation of the statutory language indicates that only insanity or imbecility resulting from an injury which also involves the skull is currently eligible for LIB[s]." In that case, while the claimant was adjudicated in court to be incompetent due to his injury, an injury to the skull was not found. The decision in Appeal No. 951336 goes on to state that "Section 408.161 does not include all organic or psychological brain injuries, nor is imbecility or insanity resulting from causes other than injury involving the skull within its terms."

While the hearing officer found that the claimant sustained organic brain damage, he also notes that there was no specific diagnosis of an injury to the claimant's skull, or other physical damage to the bony structure of the claimant's head. In this regard, there was no evidence of a skull injury or injury to the skull. Nevertheless, the hearing officer,

citing Albertson's, Inc. v. Sinclair, 984 S.W.2d 958 (Tex. 1999) for the proposition of "liberal construction," simply fails to require evidence of a skull injury.

We will reverse the hearing officer's determination if we find that it is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. The hearing officer's determination that the claimant met his burden of proof with regard to entitlement to LIBs for an injury to the skull is so weak and against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust and, therefore, we reverse and render the decision as to that issue.

The decision and order of the hearing officer are reversed and a new decision rendered that the claimant is not entitled to LIBs because he did not sustain a skull injury on \_\_\_\_\_, and that the carrier is not liable for LIBs for an injury to the skull which caused imbecility.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

\_\_\_\_\_  
Michael B. McShane  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Judy L. S. Barnes  
Appeals Judge

\_\_\_\_\_  
Philip F. O'Neill  
Appeals Judge