APPEAL NO. 011861
FILED SEPTEMBER 18, 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 11, 2001, with the record closing on July 23, 2001. The hearing officer determined that, at this time, the appellant (claimant) is not entitled to lifetime income benefits (LIBs) based on the loss of and/or total and permanent loss of use of both feet and legs. The claimant has appealed this determination, arguing that the hearing officer erred as a matter of law in making her decision. The respondent (carrier) submitted a response which urges affirmance of the hearing officer's factual determinations.

DECISION

Affirmed.

The claimant sustained a compensable injury on _____, when he fell from an aeration tank. He has experienced paralysis of both legs from the hips down since the date of injury. Despite extensive medical examinations, including neurological and psychiatric evaluations, there is considerable disagreement among medical professionals as to the cause of the paralysis and as to whether it is a permanent condition. Specifically, some doctors believe that the claimant is suffering from a conversion reaction (a psychiatric condition) which has resulted in paraplegia; the claimant's treating doctor asserts that the paraplegia is the result of ventral cord syndrome, a spinal injury.

The provision of the 1989 Act controlling LIBs is Section 408.161, which provides, in relevant part, as follows:

> (a) [LIBs] are paid until the death of the employee for:
>
> * * * * *
>
> (2) loss of both feet at or above the ankle;
>
> * * * * *
>
> (5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg[.]
>
> * * * * *
>
> (b) For purposes of Subsection (a), the total and permanent loss of use of a body part is the loss of that body part.

We note that Section 408.161(a)(5) differs from several of the other provisions of Section 408.161(a) in that it requires that a spinal injury result in permanent and complete paralysis of either both legs, both arms, or one arm and one leg. This requires more than proof of the loss of use as is required by other provisions of Section 408.161(a). In the present case, the hearing officer found that the claimant's injury is a conversion reaction, resulting in paraplegia. She did not find from the evidence presented, and at the claimant's urging, that the claimant has a spinal injury which has resulted in paraplegia. Given the

evidence that was before the hearing officer on this issue, we find no error in her not awarding LIBs pursuant to Section 408.161(a)(5).

As to the issue of whether the claimant is entitled to LIBs under the "total loss of use" provision of Section 408.161(a)(2), the hearing officer correctly considered the case of Travelers Insurance Company v. Seabolt, 361 S.W.2d 204, 206 (Tex. 1962), to the effect that "total loss of use" of a member of the body means that such member no longer possesses any substantial utility as a member of the body, or the condition of the injured worker is such that the worker cannot get and keep employment requiring the use of such member. We have 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. Texas Workers' Compensation Commission Appeal No. 941065, decided September 21, 1994. In addition to the analysis under Seabolt, the hearing officer stressed that the claimant failed to establish that his loss of use of his legs is permanent. The hearing officer's consideration of the total and permanent loss of use of both feet and legs issue is reflected in Finding of Fact No. 5. The question of whether a claimant has suffered a total and permanent loss of use of a member is generally a question of fact for the hearing officer to resolve. *See* Appeal No. 941065. 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 of 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, 702 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is 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); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find sufficient evidence to support the findings of the hearing officer.

The decision and order of the hearing officer are affirmed.

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

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge