

APPEAL NO. 012250
FILED OCTOBER 31, 2001

Following a contested case hearing held in Corpus Christi, Texas, on August 29, 2001, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by determining that the appellant (claimant) is not entitled to lifetime income benefits (LIBs) because her compensable injury of _____, did not, as of March 19, 2001, include an injury to the skull resulting in incurable insanity or imbecility. The claimant appeals, asserting that the hearing officer's determination is against the great weight and preponderance of the evidence because the medical evidence shows that she sustained a head injury which resulted in a traumatic brain injury. Responding that the evidence is sufficient to support the challenged determination, the respondent (self-insured) contends that the medical evidence does not establish that the claimant had an injury to the skull, as such, as well as incurable insanity or imbecility but, rather, shows gross pseudodementia and symptom exaggeration.

DECISION

Affirmed.

The claimant testified that on _____, while working as a jailor at the self-insured's jail, she was "beaten up" by prisoners (who were reaching through the bars), which involved being struck with fists on her ear, neck and the back of her head with her head hitting a wall; that she cannot remember whether she lost consciousness; that after the assault she was told to go home, take a bath, and return to work; and that she cannot remember if she went to an emergency room. In a Decision and Order signed on March 25, 1998, another hearing officer resolved the sole disputed issue by awarding the claimant supplemental income benefits for the ninth quarter. That hearing officer found, among other things, that the claimant suffered a closed head injury along with neck and right shoulder injuries. That decision was appealed by the self-insured and the Appeals Panel affirmed. Texas Workers' Compensation Commission Appeal No. 980886, decided June 16, 1998 (Unpublished). The claimant further testified that she has a driver's license but only drives infrequently.

The LIBs statute applicable to the claimant's compensable injury, namely, a compensable injury that occurs on or before September 1, 1997, provides in pertinent part that LIBs are paid until the death of the employee for "an injury to the skull resulting in incurable insanity or imbecility." Section 408.161(a)(6). For compensable injuries occurring on or after September 1, 1997, the statute provides that LIBs are paid for "a physically traumatic injury to the brain resulting in incurable insanity or imbecility." The claimant, who had the burden of proof, produced no medical evidence of a skull fracture or other damage or harm to the skull, as such. The self-insured relied on the reports of Dr. L, a required medical examination (RME) doctor selected by the Texas Workers' Compensation Commission. Dr. L reported as follows on August 3, 2001: "In my opinion,

[claimant] did not sustain a concussion nor did she sustain a skull fracture which was demonstrated by x-rays of the skull. Furthermore no structural brain abnormality was revealed in the MRI. An injury to the skull alone without substantial brain damage does not result in incurable insanity or imbecility.” In his October 20, 2000, report, Dr. G, who reviewed the claimant’s records, states the diagnosis as a mild closed head injury, depression with symptom magnification, cervical and right shoulder sprain, and a left ear injury requiring surgery. Dr. G reported on November 2, 2000, that the claimant does not meet the requirements for total and permanent disability “as she does not have incurable insanity, imbecility, or dementia,” and that she does not meet the requirements for entitlement to LIBs.

The hearing officer found that the claimant did sustain a closed head injury on _____, but not an injury to her skull, and that her closed head injury did not result in incurable insanity or imbecility. The claimant argued below, in effect, that the version of Section 408.161(a)(6) applicable to the claimant’s date of injury should be “liberally construed”; that it would be “absurd” to construe Section 408.161(a)(6) in such a manner as to deprive a brain-damaged claimant of LIBs simply because there was no evidence of a skull fracture; and that there would have to be some sort of skull damage, at least to the interior lining of the skull, for the claimant to have suffered her brain injury. The claimant’s contentions concerning the construction of the applicable version of Section 408.161(a)(6) were directly addressed by the Appeals Panel in Texas Workers’ Compensation Commission Appeal No. 951336, decided September 20, 1995. We regard that decision as dispositive of the claimant’s arguments in this case.

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 are satisfied that the hearing officer’s findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (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 true corporate name of the insurance carrier is **(SELF-INSURED EMPLOYER, SELF-INSURED THROUGH THE TEXAS ASSOCIATION OF COUNTIES WORKERS' COMPENSATION SELF-INSURANCE FUND** and the name and address of its registered agent for service of process is

**SAM SEALE, EXECUTIVE DIRECTOR
TEXAS ASSOCIATION OF COUNTIES
1204 SAN ANTONIO
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge