APPEAL NO. 012441
FILED NOVEMBER 21, 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 September 17, 2001. He determined that the respondent (claimant herein) is entitled to lifetime income benefits (LIBs) based on the total and permanent loss of use of both feet. The appellant (carrier herein) urges on appeal that the case should be remanded to the hearing officer because he did not consider all of the evidence, the decision and order is so deficient that it does not lend itself to any meaningful review on appeal, and the evidence is insufficient to support the determinations. The claimant urges affirmance.

DECISION

Affirmed.

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. The parties stipulated that the claimant sustained a compensable injury to his shoulder on _____. The evidence reflects that subsequent to the compensable injury, the claimant developed diabetes, which the carrier accepted as part of the compensable injury, and motor sensory polyneuropathy, affecting his lower extremities. Dr. K testified that the claimant's feet, at or above the ankle, no longer possess any substantial utility as members of his body and that, due to the condition of the feet, he is not able to get and keep employment requiring the use of the feet. The claimant testified that he is confined to a wheelchair, and Dr. K testified that the claimant's condition is expected to be permanent.

The hearing officer's findings of fact and conclusions of law include the following:

FINDINGS OF FACT

2. The Claimant's feet, at or above the ankle, no longer possess any substantial utility as a [sic] members of the Claimant's body.

3. The condition of the Claimant's injured feet, at or above his ankle, are such that the Claimant cannot get and keep employment requiring the use of such members.

4. Carrier accepted the Claimant's diabetes as compensable.

5. As a result of the compensable diabetes, Claimant has total and permanent loss of use of both feet, at or above the ankle.

CONCLUSION OF LAW

3. The Claimant is entitled to [LIBs] based on the total and permanent loss of use of both feet.

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;

* * * *

(b) For purposes of Subsection (a), the total and permanent loss of use of a body part is the loss of that body part.

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) (hereinafter Seabolt), 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. In Texas Workers' Compensation Commission Appeal No. 952100, decided January 23, 1996, we 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. *See also* Texas Workers' Compensation Commission Appeal No. 941065, decided September 21, 1994. That is, evidence supporting either of the definitions of total loss of use will support recovery. In Seabolt, the Texas Supreme Court discussed the second prong of the test for establishing total loss of use and noted that it represents a "broader concept" than the first prong and "one which will in most instances be more favorable to the injured workman." The court further stated:

> Although a member may possess some utility as a part of the body, if its condition be such as to prevent the workman from procuring and retaining employment requiring the use of the injured member, it may be said that a total loss of use has taken place.

In Navarette v. Temple Independent School Dist., 706 S.W.2d 308 (Tex. 1986), the supreme court reaffirmed the two-prong Seabolt test as the standard for determining total loss of use. *See also* INA of Texas v. Adams, 793 S.W.2d 265 (Tex. App.-Beaumont

1990, no writ) and City of Austin v. Miller, 767 S.W.2d 284 (Tex. App.-Austin 1989, writ denied), which apply the Seabolt test to determine total loss of use.

Whether a claimant has suffered a total loss of use of a member is generally a question of fact for the hearing officer to resolve. Appeal No. 952100, *supra*; Texas Workers' Compensation Commission Appeal No. 952099, decided January 24, 1996; Texas Workers' Compensation Commission Appeal No. 941618, decided January 17, 1995. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer, as the fact finder, considers the evidence before him and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Applying this standard, we find sufficient evidence to support the finding of the hearing officer that the claimant suffered a total and permanent loss of use of both feet, at or above the ankle, and such condition prevents the claimant from getting and keeping employment requiring the use of such members.

We briefly address the carrier's contentions that the hearing officer did not consider all of the evidence and that his decision is so deficient that it cannot be meaningfully reviewed on appeal. Contrary to the carrier's argument, the hearing officer is not required to detail all of the evidence both supporting and contradicting his determinations. *See* Texas Workers' Compensation Commission Appeal No. 93164, decided April 19, 1993 (Unpublished), and cases cited therein.

The decision and order of the hearing officer are affirmed.

The true corporate name of the self-insured is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MARCUS C. MERRITT
6600 E. CAMPUS CIRCLE DR., SUITE 200
IRVING, TEXAS 75063.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge