

APPEAL NO. 012554  
FILED DECEMBER 5, 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 (CCH) was held on October 2, 2001. The hearing officer determined that the respondent/cross-appellant (claimant) has a spinal injury which resulted in permanent and complete paralysis of both legs as of \_\_\_\_\_, and is therefore entitled to lifetime income benefits (LIBs). The appellant/cross-respondent (carrier) appeals on grounds of sufficiency of the evidence. The claimant replies that the evidence is sufficient to support the hearing officer's decision that the claimant has a spinal injury resulting in permanent and complete paralysis of both legs. The claimant cross-appeals, arguing that there is confusion about the date of LIBs entitlement which arises from the way that the hearing officer stated Conclusion of Law No. 4, and that the hearing officer erred by not finding that the claimant is entitled to LIBs under Section 408.161(a)(2) [subsection (a)(2) hereafter], as well as under Section 408.161(a)(5) [subsection (a)(5) hereafter]. The carrier replied to the cross-appeal, urging that the hearing officer found that the claimant did not establish permanent and complete paralysis of both legs prior to \_\_\_\_\_, and that LIBs would therefore accrue from that date, and urging that the hearing officer is correct in determining that the claimant did not establish entitlement to LIBs under subsection (a)(2).

DECISION

Affirmed.

The claimant sustained a compensable spine injury on \_\_\_\_\_. In a prior CCH involving this claim, the injury was determined to include a thoracic syringomyelia with marked paraparesis, among other conditions. The extent-of-injury determination was affirmed on appeal. Texas Workers' Compensation Commission Appeal No. 001776, decided September 18, 2000. This CCH dealt with the issue of whether the syringomyelia has caused permanent and complete paralysis of both legs, thereby entitling the claimant to LIBs.

Section 408.161 provides, in pertinent part:

Sec. 408.161. LIFETIME INCOME BENEFITS.

(a) Lifetime income benefits are paid until the death of the employee for:

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(2) loss of both feet at or above the ankle;

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- (5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; or

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

At the outset of the CCH, the claimant raised the question of whether subsection (a)(2) applied in this case, in addition to subsection (a)(5). The claimant argued that under Section 408.161(b), “the total and permanent loss of use of a body part is the loss of that body part,” therefore paralysis of both legs results in a “loss of both feet at or above the ankle,” entitling the claimant to LIBs under subsection (a)(2). The parties and the hearing officer also discussed whether the claimant was entitled to LIBs under subsection (a)(2). The claimant took the position that under Tex. W.C. Comm’n, 28 TEX. ADMIN. CODE § 131.1(a) (Rule 131.1(a)), LIBs are payable retroactively from the date of disability for losses described in subsection (a)(2), while LIBs for a subsection (a)(5) injury are payable when maximum medical improvement is certified. Under this interpretation, there could be a substantial difference in the accrual date for LIBs in this case, depending on which subsection applied. The carrier takes the position that if LIBs are payable in this case, they are payable from the hearing officer’s determination of permanent and complete paralysis of both legs “as of \_\_\_\_\_.”

The hearing officer did not make any findings which specifically cited a particular Section of the 1989 Act, but he did use language which tracks subsection (a)(5). We conclude that it was his intention to render a finding that the claimant is entitled to LIBs on the basis of an injury to the spine that results in permanent and complete paralysis of both legs, as provided for in subsection (a)(5), and not on the basis of the loss of use of both feet at or above the ankle, as provided for in subsection (a)(2). It was not error to so find, as the evidence supports the hearing officer’s factual determination. 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 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 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find it to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Turning to the question of the accrual date of LIBs, both the claimant and the carrier have advanced positions which we conclude are incorrect. We have previously held that LIBs begin to accrue and are payable retroactively from the date of disability. See Texas Workers' Compensation Commission Appeal No. 991293, decided July 30, 1999. This is without regard to whether the entitlement to LIBs arises under any particular subsection of Section 408.161. The hearing officer correctly stated that the claimant is entitled to LIBs from the date of disability. We understand how there could be confusion by his statement that the entitlement to LIBs is "based on total and complete paralysis of both legs as of \_\_\_\_\_." We construe his statement as meaning that the hearing officer was persuaded that the claimant's medical evidence (the \_\_\_\_\_, report of the Texas Workers' Compensation Commission-selected required medical examination doctor, Dr. GV), established, as of that date, that there was permanent and complete paralysis of both legs. The hearing officer was not indicating that LIBs entitlement began on that date. We reiterate, **under all subsections of Section 408.161(a), LIBs accrue from the date of disability.**

We affirm the decision and order of the hearing officer.

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

**BOB TALLEY  
PARAGON CENTER ONE  
450 GEARS ROAD, SUITE 400  
HOUSTON, TEXAS 77067.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Robert W. Potts  
Appeals Judge