

APPEAL NO. 020660
FILED APRIL 19, 2002

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 November 14, 2001. The hearing officer resolved the disputed issue by concluding that the appellant (claimant) is not entitled to lifetime income benefits (LIBs) based on an injury to the skull resulting in incurable insanity or imbecility. The claimant appeals, arguing that the evidence establishes that the claimant fits the categories of insanity and imbecility. The respondent (self-insured) replies that the decision of the hearing officer was supported by the evidence and should be affirmed.

DECISION

Affirmed.

The hearing officer wrote a detailed summary of the evidence and his analysis of case law. It is undisputed that the claimant sustained a compensable injury on _____, when, while at work, the claimant fell approximately 20 feet and struck his head. Although there was an amendment to the section of the 1989 Act effective for injuries on or after September 1, 1997, Section 408.161(a)(6), in effect on the date of injury in this case, provides that LIBs are paid until the death of the employee for an "injury to the skull resulting in incurable insanity or imbecility."

In Texas Workers' Compensation Commission Appeal No. 961340, decided August 21, 1996, a case involving entitlement to LIBs based on incurable imbecility, the Appeals Panel noted:

BLACK'S LAW DICTIONARY 749 (6th ed. 1990) refers the reader to the definition of insanity for a definition of imbecility; that DORLAND'S [ILLUSTRATED MEDICAL DICTIONARY 105 (28th ed. 1994)] at 820, defines imbecility as the condition of being an imbecile; moderate or severe mental retardation; and that WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY (1991) defines . . . imbecile as a mentally deficient person, especially a feebleminded person having a mental age of three to seven years and requiring supervision in the performance of routine daily tasks or caring for himself.

We note that in National Union Fire Insurance Company v. Burnett, 968 S.W.2d 950, 956, (Tex. App.-Texarkana 1998, pet. denied) a case dealing with the issue of whether depression fell within the definition of insanity, the Texarkana Court of Appeals mentioned Appeal No. 961340, noting its definition of imbecility from WEBSTER'S.

In a report dated July 23, 2001, Dr. G, who performed an independent medical examination, opined that the claimant did not meet the criteria of imbecility at this time. Dr.

G stated that although it was probable that the claimant will not be able to live independently, he probably will be able to live in a halfway house utilizing transportation to and from employment. The evidence reflected that the claimant had been employed part-time for six years and that the claimant often made the arrangements for transportation to his place of employment. The evidence additionally indicated that the claimant's court-ordered guardianship was terminated a few years ago.

The claimant had the burden of proving entitlement to LIBs. The hearing officer's determination that he did not do so is supportable considering the evidence in the record. 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). 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 and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion for that of the hearing officer.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Susan M. Kelley
Appeals Judge