

APPEAL NO. 030320  
FILED MARCH 18, 2003

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 January 28, 2003. On the sole issue, the hearing officer determined that the appellant (claimant) is not entitled to lifetime income benefits (LIBs). The claimant appeals the determination on sufficiency of the evidence grounds. The (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to LIBs. At issue is whether the claimant is entitled to LIBs, under Section 408.161(a)(4), for the total and permanent loss of use of one foot at or above the ankle and the loss of one hand at or above the wrist. We have said that the test for total loss of use is whether the member 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. Texas Workers' Compensation Commission Appeal No. 94689, decided July 8, 1994, citing Travelers Ins. Co. v. Seabolt, 361 S.W.2d 204, 206 (Tex. 1962). The question of whether a claimant suffered a permanent and total loss of use of a member is generally a question of fact for the hearing officer to resolve. 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)). The hearing officer was not persuaded that the claimant sustained her burden of proving that she was entitled to LIBs under either prong of Seabolt. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant contends that the hearing officer demonstrated bias in reaching his decision and requests reversal on this basis. We find no support in the record for the claimant's contention that the hearing officer was motivated by or in any way demonstrated bias against the claimant. The mere fact that the hearing officer issued a decision adverse to the claimant does not, in our view, demonstrate bias but is the prerogative of the hearing officer as the sole judge of the weight and credibility of the evidence. Accordingly, we find no basis to reverse the hearing officer's decision.

The decision and order of the hearing officer are affirmed.

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

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

---

Edward Vilano  
Appeals Judge

CONCUR:

---

Daniel R. Barry  
Appeals Judge

---

Chris Cowan  
Appeals Judge