

APPEAL NO. 030678
FILED APRIL 30, 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 15, 2003, with the record closing January 27, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to lifetime income benefits (LIBs) based on the total and permanent loss of use of both feet and legs. The appellant (carrier) appealed the hearing officer's LIBs determination based on sufficiency of the evidence grounds. The claimant responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is entitled to LIBs as a result of the compensable bilateral knee injury of _____. At issue is whether the claimant is entitled to LIBs under Section 408.161(a)(2) for the permanent and total loss of use of both feet at or above the ankle. 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). In Texas Workers' Compensation Commission Appeal No. 952100, decided January 23, 1996, we noted that the Seabolt test is disjunctive and that the 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. 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)). 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). That another fact finder may have drawn a different inference from the evidence does not afford us a basis to reverse the hearing officer.

The hearing officer's decision and order are affirmed.

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

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Edward Vilano
Appeals Judge

Judy L. S. Barnes
Appeals Judge