

APPEAL NO. 031510
FILED AUGUST 4, 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 May 13, 2003. The hearing officer determined that the appellant (claimant) is not entitled to lifetime income benefits (LIBs) under Section 408.161(a)(2) and (5). The claimant appeals on sufficiency of the evidence grounds. There is no response on file from the respondent (carrier).

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to LIBs. The claimant contended, and the hearing officer considered, whether the claimant was entitled to LIBs under Section 408.161(a)(2) for loss of both feet at or above the ankle and Section 408.161(a)(5) for an injury to the spine that results in permanent and complete paralysis of both legs. We have said that the test for total loss of use, under Section 408.161(a)(2) 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). We note that Section 408.161(a)(5) differs from 408.161(a)(2) in that it requires more than proof of loss of use. Texas Workers' Compensation Commission Appeal No. 011066, decided June 27, 2001. Whether the claimant was entitled to LIBs under either theory was 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).

The decision and order of the hearing officer are affirmed.

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

**U.S. CORPORATION COMPANY
400 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge