

APPEAL NO. 032597  
FILED NOVEMBER 17, 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 September 11, 2003. The hearing officer determined that the appellant (claimant) is not entitled to lifetime income benefits (LIBs) based on permanent loss of use of both feet or both legs. The claimant appeals this determination and attached new evidence to his appeal that was not submitted at the hearing. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

In determining whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that was not submitted into the record and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the documents attached to the claimant's appeal, which were not admitted into evidence at the hearing. Consequently, we decline to consider this evidence on appeal.

Section 408.161 provides, in part, that LIBs are paid until the death of the employee for loss of both feet at or above the ankle, or for an injury to the spine that results in permanent and complete paralysis of both legs. In Texas Workers' Compensation Commission Appeal No. 94689, decided July 8, 1994, we held that the legal test for total loss of use had not changed from prior law and that the proper standard is as follows:

"Total loss of use" of a member of the body exists whenever by reason of injury such member no longer possesses any substantial utility as a member of the body or the condition of the injured member is such that the worker cannot get and keep employment requiring the use of such member.

In the present case, the hearing officer found that the claimant's back injury did not result in paralysis of both legs and that he does not have loss of use of both legs. These were factual matters for the hearing officer. 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 of the weight and credibility that is to be given to 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, 702 (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, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's LIBs 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).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY  
701 BRAZOS, SUITE 1050  
AUSTIN, TEXAS 78701.**

---

Chris Cowan  
Appeals Judge

CONCUR:

---

Elaine M. Chaney  
Appeals Judge

---

Gary L. Kilgore  
Appeals Judge