

APPEAL NO. 041952
FILED SEPTEMBER 20, 2004

This appeal on remand 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 March 18, 2004. The hearing officer resolved the disputed issue by determining that the appellant (claimant) is not entitled to lifetime income benefits (LIBs) based on the total and permanent loss of use of both feet and/or both hands. In Texas Workers' Compensation Commission Appeal No. 040927, decided June 16, 2004, we remanded the case for reconstruction of the record as the audiotape was inaudible and a transcript of the proceedings was not provided. On remand, the hearing officer obtained a copy of the transcript and issued the same decision as he had previously. The claimant appeals the LIBs determination. The respondent (carrier) urges affirmance of the hearing officer's decision and order.

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 based on the total and permanent loss of use of both feet and/or hands as provided in Section 408.161(a). 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). It is clear from the hearing officer's decision that he considered and applied the Seabolt test in making his determination. Whether the claimant satisfied the aforementioned test 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 **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Chris Cowan
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge