

APPEAL NO. 050297
FILED MARCH 25, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 12, 2005. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to lifetime income benefits (LIBs) based upon an injury to the skull resulting in incurable insanity or imbecility. The appellant (carrier) appeals, disputing the LIBs determination. The carrier contends that there was no evidence, or alternatively legally insufficient evidence, of an injury to the skull; that there was no evidence that injury to the skull caused the claimant's permanent insanity, if any; and that the hearing officer's findings of fact failed to support the definition of insanity applied in this case. The claimant responded, urging affirmance.

DECISION

Reversed and rendered.

The parties stipulated that on _____, the claimant sustained a compensable injury. The claimant sustained a closed head injury, along with injuries to his neck, back, and legs. The evidence reflects that the claimant underwent long-term hospitalization and rehabilitation. From the evidence it is apparent that the claimant has had and continues to have significant psychological/psychiatric conditions, the extent being a matter of dispute. The hearing officer specifically found that the claimant is of average intelligence with visual intelligence greater than auditory intelligence, per several medical tests and is capable of taking care of himself.

With respect to this case, which is based upon a compensable injury which occurred prior to September 1, 1997, Section 408.161(a)(6) provides that LIBs are payable for "an injury to the skull resulting in incurable insanity or imbecility." We note that the Legislature changed the law for compensable injuries occurring on or after September 1, 1997, to provide for LIBs in the case of a physically traumatic injury to the brain resulting in incurable insanity or imbecility, but the change does not apply to this claimant. The Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 951336, decided September 20, 1995, used the following definition of "skull" contained in DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, at page 1535 (28th ed. 1994) (hereafter DORLAND'S): "The bony framework of the head, composed of the cranial bones and bones of the face." Texas Workers' Compensation Commission Appeal No. 030324, decided April 2, 2003.

We previously held that the version of Section 408.161(a)(6) which was in effect for injuries that occurred on or before September 1, 1997, "does not include all organic or psychological brain injuries, nor is imbecility or insanity resulting from causes other than injury involving the skull within its terms." Appeal No. 951336, *supra*. Although the claimant in that case had a brain injury resulting from being struck by lightning, he was

unable to prove that he had a skull injury and thus did not prove entitlement to LIBs. In the instant case, in his background information, the hearing officer stated that it is undisputable that the claimant suffered an injury to the skull resulting in immediate brain damage. However, on appeal the carrier contends that there was no evidence, or alternatively legally insufficient evidence, of any injury to the skull. The hearing officer additionally states, that "it is within a reasonable layperson's knowledge to be able to judge that a person has sustained an injury to the skull when his head hits the concrete." We disagree.

The evidence admitted at the CCH shows that the claimant sustained hemorrhagic contusions to the left temporal lobe and inferior medial frontal lobes of the brain, as well as cerebral edema and subdural blood in the interhemispheric fissure along the tentorium. The claimant contends that he fractured his teeth, requiring dental work, and suffered permanent partial loss of hearing as a result of his compensable injury. The claimant contends that this is evidence of injury to the skull. There is medical evidence in the record that the claimant required dental treatment due to facial trauma sustained. However, the claimant, who had the burden of proof, produced no medical evidence of a skull fracture, or other damage or harm to the skull as such.

We will reverse the hearing officer's determination if we find that it is so against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Because there is no medical evidence establishing an injury to the skull, the hearing officer's determination that the claimant suffered an injury to the skull resulting in immediate and permanent brain damage is so against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, we reverse the decision that the claimant is entitled to LIBs, and render a new decision that the claimant is not entitled to LIBs.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Veronica L. Ruberto
Appeals Judge