

APPEAL NO. 040368  
FILED MARCH 31, 2004

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 29, 2004. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) "is not entitled to lifetime income benefits (LIBs) based on the loss of and/or total and permanent loss of use of both hands and one hand [sic] as of this date." The claimant appealed, disputing the determination of nonentitlement to LIBs. The respondent (carrier) responded, urging affirmance. The carrier contended that the evidence fully supported the findings and conclusions of the hearing officer.

DECISION

Affirmed as reformed.

It is undisputed that the claimant sustained a compensable injury on \_\_\_\_\_. The disputed issue is whether the claimant is entitled to LIBs based on the loss of and/or the total and permanent loss of use of her hands as of the date of the CCH. See Sections 408.161(a)(3) and (b). In Texas Workers' Compensation Commission Appeal No. 010124, decided March 6, 2001, citing Travelers Ins. Co. v. Seabolt, 361 S.W.2d 204, 206 (Tex. 1962), we noted 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. In Texas Workers' Compensation Commission Appeal No. 952100, decided January 23, 1996, we noted that the Seabolt, *supra*, test is disjunctive and that a claimant need only satisfy one prong of the test in order to establish entitlement to LIBs. The hearing officer noted that the claimant did not appear credible in her testimony regarding the activities she could not perform and that the videotape depicted the claimant performing activities she testified she could not do. Additionally, the hearing officer noted that there was conflicting medical evidence regarding the claimant's bilateral upper extremity condition and her ability to work.

The hearing officer did not err in determining that the claimant is not entitled to LIBs. 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)). The hearing officer was not persuaded that the claimant sustained her burden of proving that she was entitled to LIBs. 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).

We reform Conclusion of Law No. 3 and the decision to correct a typographical error. Conclusion of Law No. 3 and the decision are reformed to read as follows: The claimant is not entitled to lifetime income benefits based on the loss of and/or total and permanent loss of use of both hands as of this date.

We affirm the decision and order of the hearing officer as reformed.

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

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET, SUITE 300  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge