APPEAL NO. 931078

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq*). A contested case hearing, (hearing officer) presiding, was held in (city), Texas, on October 20, 1993. The claimant, (claimant), who is the appellant, had injured his wrist on (date of injury), while employed by (employer) (employer). The issues were whether the claimant disputed his initial impairment rating (which was given November 11, 1991) within ninety days, and if he had disability after the proposed date of maximum medical improvement (MMI) which was November 8, 1991. The hearing officer determined that claimant had not timely disputed his initial impairment rating, and thus it became final. She found certain periods of disability, although she determined that claimant was not eligible for any further income benefits after November 8, 1991.

The claimant in his request for review says he wishes a review of: (1) the date of the first Texas Workers' Compensation Commission (Commission) notification; (2) timely disputing impairment rating; (3) disabilities past November 8, 1991; (4) the impairment rating that was given; (5) the date of the letter which was sent to the carrier; and (6) the dates in which claimant contacted the commission relating to changing his treating physician. No response was filed.

DECISION

Finding no reversible error, we affirm the decision of the hearing officer.

The claimant worked in maintenance for the employer, and fell on his left wrist while using a lug wrench on (date of injury). The record indicated that his first choice of treating physician was (Dr. L), who opined soon after the injury that he had carpal tunnel syndrome in the left hand. The record indicates that claimant is right-handed.

Dr. L referred claimant to (Dr. C), who examined claimant electrographically on May 1, 1991, and determined, primarily from nerve conduction studies, that he had carpal tunnel syndrome. Although he apparently recommended surgery, and claimant saw yet another doctor for this purpose, claimant testified he had not had surgery as of the date of the hearing.

On July 18, 1991, claimant was examined by (Dr. E) pursuant to a Medical Examination Order (MEO)[1] sought by the carrier. Dr. E found that claimant had sustained a sprained wrist, and he noted that claimant had been electrodiagnostically studied for carpal tunnel syndrome. Dr. E stated that claimant had no permanent impairment of function and had made an excellent recovery. Claimant stated that he returned to work August 5, 1991

[1]Notwithstanding the appealed points as to claimant's change of treating doctor, there was no issue before the hearing officer as to the identity of claimant's treating doctor, nor was it pertinent to resolution of the issues before her. We observe, however, that the carrier apparently took the position, erroneously, that Dr. E was claimant's treating physician because he "treated" with Dr. E for over 60 days. We note that the 60 day provision of prior Rule 126.7(f) [even assuming that a voluntary visit after an MEO constitutes a course of "treatment"], on which carrier's adjuster apparently relied, applies only to the initial choice of treating doctor, not to subsequent choices.

and worked until September 26, 1991. He thereafter consulted with Dr. L, who released him back to work effective October 21, 1991. That same day, claimant returned to Dr. E, who noted his grip strength in the left hand was about half that of the right, and took him off work pending the results of an arthrogram and cinefluoroscopy. These were conducted October 31, 1991. Dr. E, on November 11, 1991, judged these tests to be normal. Grip strength in the hands was taken and indicated that the left hand was only slightly weaker than the right (claimant's dominant hand). He further noted that claimant had full digital range of motion, there was no popping or clicking, and no impairment of function found. He returned claimant to work. Dr. E completed a TWCC-69 Report of Medical Evaluation which found that claimant reached MMI effective November 8, 1991, with a zero percent impairment. Claimant stated that he was aware of this impairment rating. Dr. E's records indicated that he felt claimant had strained his left wrist, and he did not diagnose carpal tunnel syndrome.

Claimant was subsequently terminated from the employer for failure to contact the employer about returning to work. Claimant admitted he did not respond to the employer when contacted about returning. The first date that he stated he conveyed a disagreement to anyone about Dr. E's impairment rating was by certified letter to the carrier, a purported copy of which was included in his exhibits and dated January 2, 1992. He said he did not call the Commission at this time, although he felt that he had contacted the Commission by telephone sometime prior to October 1992, his next letter to the carrier.

Claimant received approval from the Commission to change his treating doctor to Dr. C on April 26, 1993, and saw Dr. C in June 1993. He testified that he saw no doctors between November 1991 and this examination by Dr. C. Claimant admitted that the carrier had not denied any treatment, however, he seemed to be under the impression that affirmative approval was required for him each time to see a doctor. Claimant stated that he called the carrier numerous times, and usually got their answering machine. He stated that calls were not returned.

(MS), the claimant's wife, stated that she called the adjuster, (IF), in December 1991 to indicate disagreement with the 0% impairment rating. MS stated that she was aware of the 90 day deadline for disputing and that was why her husband sent a letter to this adjuster on January 2, 1992, by certified mail. MS stated that they did not have the return "green card" showing receipt by the carrier. MS stated she called the Commission in January and spoke to an unknown person who urged that the claimant try to work out something with the carrier. MS indicated that some months later, after leaving messages on IF's answering machine, they found out that IF was no longer the adjuster and that claimant's case had been closed by the carrier. In October 1992, another letter was written indicating disagreement.

The adjuster, (Ms. A), stated that she assumed responsibility for claims files relating to the employer's employees in December 1991 and January 1992.
She stated that the first contact she had with claimant or his wife was October 7, 1992, when she received a letter and then a phone call from MS. She stated that the conversation was

to the effect that claimant was still having problems with his wrist and that he wanted medical treatment. Ms. A said she made an appointment with Dr. E for claimant, but he did not keep the appointment. She stated that MS never mentioned to her any dispute with the impairment rating in this conversation. According to Ms. A, the carrier preauthorized surgery three months before the hearing; an approval letter dated July 15, 1993, is in the record.

Based upon official notice of the claims file, the hearing officer determined that the first contact to the Commission that indicated dispute with the impairment rating was made July 8, 1993.

Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence, as well and the weight and credibility that is to be given the evidence. It was for the hearing officer, the trier of fact, to resolve the obvious inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, 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 (Tex. Civ. App.-Fort Worth 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Tex. W.C. Comm'n Rules, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5 (e)) provides that the first impairment rating assigned to a claimant becomes final if it is not disputed within 90 days. In this case, the hearing officer may have believed from the totality of claimant's conduct that a dispute with the impairment rating had not been timely made by claimant. The Appeals Panel has noted that when an impairment rating is final, the effect is also to finalize the underlying MMI certification. Texas Workers' Compensation Commission Appeal Decision No. 92670, decided February 1, 1993. As temporary income benefits are not paid after a person reaches MMI, Section 408.101, the hearing officer's determination that no more income benefits were due after November 8, 1991, was correct.

The hearing officer's decision is affirmed.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Joe Sebesta
Appeals Judge