APPEAL NO. 93917

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq*. (formerly V.A.C.S., Article 8308-1.01 *et seq*.) On September 16, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) did not timely dispute the initial impairment rating given by her treating physician when she sought to change her treating doctor; maximum medical improvement (MMI) was reached on February 3, 1993, with a six percent impairment. Claimant appealed, stating that she has not been informed of the requirements of Tex W. C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) and needed to see another doctor because she was sick. Carrier replied that the hearing officer should be upheld.

DECISION

We affirm.

The issues stated to be before this hearing were did the claimant timely dispute the initial impairment rating, has MMI been reached, and if so, what is the correct impairment rating.

Claimant worked for a school district. She hurt her back in a bathroom. She saw (Dr. B) from approximately July 1992 through January 1993. Dr. B had prescribed physical therapy and certain medications for claimant. On February 3, 1993, Dr. B issued a TWCC-69 (Report of Medical Evaluation) which claimant acknowledged that she received in "late February." On February 25, 1993, claimant signed a TWCC-53 (Request to Change Treating Doctor). That form contained the following:

I am very dissatisfied with [Dr. B's] diagnosis and treatment of my present condition.

> I am still experiencing extreme pain. I feel as though [Dr. B] has not explained my condition to my complete understanding nor do I believe he has performed a thorough exploration of my injury. I feel as though other test (sic) should have been performed to determine cause and proper treatment to eliminate my pain.

Claimant introduced no other documents than the TWCC-69 and TWCC-53; she testified, but no other witness was called, nor was any statement offered. Claimant testified that she was not pleased with Dr. B and "what he wrote." She testified that she disputed the impairment rating when she requested the change of doctors. She agreed that she talked with an employee of the Texas Workers' Compensation Commission (Commission) after she received the TWCC-69 but could not remember whether she said she was disputing the rating. She received the blank TWCC-53 and filled it out. She did not indicate that she communicated any other request or information within 90 days that could qualify as a dispute of the initial rating. Her testimony indicates that she first saw another doctor on June 11, 1993.

Claimant states that she did not know the requirements of Rule 130.5(e). Texas Workers' Compensation Commission Appeal No. 93385, dated July 2, 1993, stated that ignorance of the law does not amount to good cause to relieve a party from the effect of a deadline. In addition, Texas Workers' Compensation Commission Appeal No. 93684, dated September 21, 1993, cited Appeal No. 93139, dated April 8, 1993, for the proposition that Rule 130.5(e) contained no good cause exception for failure to dispute within the 90 day period.

Appeal 93684, *supra*, also stated that whether a request for a second treating doctor conveyed a dispute over MMI and/or impairment rating was a factual matter to be considered on a case by case basis. Texas Workers' Compensation Commission Appeal No. 93666, dated September 15, 1993, affirmed a decision that held such a request was a dispute of the impairment rating under Rule 130.5(e). In Appeal No. 93666, the claimant produced evidence that she discussed "options for disputing MMI" with an employee of the Commission and then sent a letter asking for a particular doctor to "examine me." This, coupled with the short time elapsed since learning of the initial rating, was sufficient to uphold the hearing officer's finding that the rating was timely disputed. As Appeal 93684, *supra*, also said, "there are no magic words" required to convey a dispute of the initial impairment rating, but the communication should "reasonably" apprise the recipient of what was wanted.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. In this instance the hearing officer weighed claimant's request for another doctor (her appeal states that she requested another doctor because she was sick) as not being sufficient to dispute the impairment rating of Dr. B. The evidence is sufficient to support this determination. The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge