

APPEAL NO. 94068

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. §401.001 *et seq.* (1989 Act), a contested case hearing was held in (city), Texas, on December 15, 1993, (hearing officer) presiding as hearing officer. She determined that the appellant's (claimant) date of maximum medical improvement (MMI) was December 17, 1992, and that the claimant had an 11% impairment rating (IR). Claimant filed a general appeal. Respondent (carrier) filed a response urging that the appeal was not timely, that the request for review is vague and uncertain, and that the evidence supports the decision of the hearing officer.

DECISION

Finding the evidence sufficient to support the findings and conclusions of the hearing officer, the decision and order are affirmed. We have previewed the record and find the appeal was filed within the prescribed time.

The issues at the contested case hearing were the claimant's correct date of MMI and his IR. The claimant apparently sustained a compensable soft tissue back injury on (date of injury). His treating doctor certified that he reached MMI on December 17, 1992, and assessed an 11% impairment rating. This was the first IR assigned. The claimant was advised of the MMI and IR and talked to persons at the Texas Workers' Compensation Commission (Commission). He claims that he does not speak English well and blames that on his not understanding that he had to dispute his treating doctor's rating within 90 days or it became final. He stated that he conversed with several people at the Commission in his broken English. He admitted on cross examination that during one of his visits, a bilingual interpreter was called but he doesn't remember what was said.

The hearing officer stated in her decision that a review of the evidence revealed that the claimant discussed the date of MMI and IR with an assistant disability determination officer on several occasions and was advised that if he disagreed he could dispute the matter. There was no evidence that either party disputed the matter.

Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)) provides that the first IR assigned to an employee is considered final if the rating is not disputed within 90 days. If the IR becomes final the underlying MMI also becomes final. Texas Workers' Compensation Commission Appeal No. 92693, decided February 8, 1993. Whether an IR has been timely disputed is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93047, decided March 5, 1993. And, ignorance of Rule 130.5(e) does not relieve a party of a notice deadline. Texas Workers' Compensation Commission Appeal No. 93917, decided November 23, 1993. The hearing officer determined that the claimant was certified MMI with an 11% IR on December 17, 1992, and that there had not been any timely dispute of that certification and rating. She also determined that the claimant was advised that he had 90 days to dispute the certification and rating. The hearing officer is the fact finder and is the one responsible for assessing weight and credibility of the evidence. Sections 410.165(a) and 410.168(a). Clearly, she

is supported by the evidence before her. We find no basis to disturb her findings and conclusions and, accordingly, the decision and order are affirmed. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge