APPEAL NO. 980150
FILED MARCH 9, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 4, 1997. With respect to the issue before him, the hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). In her appeal, the appellant (claimant) asserts that the hearing officer's determination that she did not timely dispute the initial certification of MMI and IR is against the great weight and preponderance of the evidence. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, that on September 9, 1996, (Dr. J) certified that the claimant reached MMI on that date with an IR of five percent, and that Dr. J was the first doctor to certify MMI and assign an IR. The claimant testified that she received Dr. J's certification in November 1996. She stated that about a week after she received Dr. J's certification, she called (Ms. H), the adjuster handling her claim for the carrier, and told Ms. H that she disagreed with Dr. J's certification. The claimant stated that Ms. H told her that she would have to call the Texas Workers' Compensation Commission (Commission) to dispute. She testified that she called the Commission on the same day and spoke to a receptionist, who advised her that she would have to get an attorney to dispute Dr. J's certification.

Ms. H testified that the claimant did not call her in November 1996 or at any other time to dispute Dr. J's certification of MMI and IR. Ms. H also stated that the computer records of the carrier do not reflect that the claimant called to dispute the IR. The carrier introduced the Commission's computer logs, which also do not reflect that the claimant had called to contest the IR in November 1996. Rather, those records first reference a dispute in September 1997.

The claimant maintains that she timely disputed Dr. J's certification by calling both the carrier and the Commission in November 1996. Admittedly the claimant so testified. However, Ms. H testified that no such conversation occurred and neither the carrier's nor the Commission's computer records corroborate that such a conversation took place. It was the hearing officer's responsibility, as the sole judge of the relevance, materiality, weight and credibility of the evidence under Section 410.165(a), to resolve the conflicts in the evidence. He was acting within his province as the fact finder in giving more weight to the testimony and evidence contrary to the claimant's testimony. Our review of the record does not demonstrate that the determinations that the claimant did not dispute Dr. J's certification of MMI and IR with either the carrier or the Commission within the 90-day

dispute period and that the certification is, therefore, final under Rule 130.5(e) are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for our reversing the decision and order on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge