APPEAL NO. 990007

This appeal is brought 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 2, 1998. The appellant (claimant) and the respondent (self-insured) stipulated that the claimant sustained a compensable injury on _____; that Dr. G, the claimant's treating doctor, certified that the claimant reached maximum medical improvement (MMI) on October 1, 1997, with a zero percent impairment rating (IR); that that certification by Dr. G was the first certification of MMI and IR; and that the claimant first disputed the first certification of MMI and IR at the first benefit review conference (BRC) held on September 8, 1998. The hearing officer determined that the compensable injury sustained on _____, is not a producing cause of the claimant's current low back injury and that the claimant did not have disability from February 27, 1998, through the date of the hearing. Those determinations have not been appealed and have become final under the provisions of Section 410.169. The hearing officer also determined that the claimant first received written notice of the first certification of MMI and IR no later than October 31, 1997; that the claimant did not dispute that certification within 90 days of receiving it; and that the first certification of MMI and IR by Dr. G became final under the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The claimant appealed those determinations; contended that he did not receive the first certification of MMI and IR until the BRC; and requested that the Appeals Panel reverse the determination that the first certification of MMI and IR became final and render a decision that it did not. The self-insured responded, urged that the evidence is sufficient to support the appealed determinations of the hearing officer, and requested that her decision be affirmed. Neither an appeal nor a response from the subclaimant has been received.

DECISION

We affirm.

A translator was used at the hearing. The claimant testified that he did not speak or read English, that he did not know the names of doctors, and that he just went to see doctors. A letter dated October 17, 1997, addressed to the claimant at City 1, Texas, states that the third party administrator had received a report from Dr. G stating that the claimant had reached MMI with a zero percent IR, that based on the report he was not eligible for additional income benefits, that if he did not agree with it he could dispute it, and that he could dispute it by contacting the Texas Workers' Compensation Commission (Commission) field office handling the claim or by calling the Commission at a toll-free telephone number provided. The copy of the letter in the record indicates that it was sent by certified mail, return receipt requested. The claimant testified that when the letter was mailed, he lived at the address on the letter. He said that he received checks from the third party administrator at that address. The claimant was shown the letter and a copy of the first certification by Dr. G. He stated that he did not remember receiving anything that looked like either of the documents, that other persons lived at that address, and that they would have given him anything that was received for him. The claimant said that at a BRC

he was told he would have had to sign a green card to receive the letter, that at the BRC he requested a copy of the green card, and that he has never received a copy of the green card. In its closing statement, the self-insured admitted that it did not have a copy of the return receipt.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. In the statement of the evidence in her Decision and Order, the hearing officer summarized the evidence related to the receipt of the first certification of MMI and IR including that the notification was mailed to the claimant's correct address and the return receipt is not in evidence. She concluded that the claimant received the notice no later than October 31, 1997. In his request for review, claimant states that he disagreed with the finding of fact that he received the notice no later than October 31, 1997, "because I no longer lived where the notice was sent," that the return receipt was not in evidence, and that there was no other evidence on that point. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). That a different factual determination could have been made based upon the same evidence is not a sufficient basis to overturn a factual determination of a hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. The hearing officer's determinations that the claimant received written notice of the first certification of MMI and IR no later than October 31, 1997; that he did not dispute the first certification within 90 days of receiving written notice of it; and that the first certification of MMI and IR became final under the provision of Rule 130.5(e) are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Gary L. Kilgore
Appeals Judge