APPEAL NO. 990290

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 January 19, 1999. On the single issue before her, the hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by the appellant's (claimant) treating doctor on January 26, 1998, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The claimant appeals, urging error in the hearing officer's finding of fact that there is insufficient compelling medical evidence of inadequate treatment or that the claimant's condition was misdiagnosed at the time of the first certification pointing to medical evidence introduced at the hearing which he feels supports a misdiagnosis. The respondent (carrier) urges that there is sufficient evidence to support the decision of the hearing officer and asks that it be affirmed.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth fairly and adequately the evidence in this case and is adopted for purposes of this review. Succinctly, on _____, the claimant sustained a back injury from lifting heavy objects on the job. He first sought treatment at a minor injury emergency clinic and later in August started treating with Dr. T. An MRI and x-rays were performed and the claimant was treated conservatively, including medication and physical therapy. Although he indicated that he experienced pain with increased activity, he thought it would go away with continued therapy. In January 1998, and following the completion of a therapy program, Dr. T certified that the claimant was at MMI effective January 26, 1998, with a 12% IR. The claimant received the certification on or about January 30, 1998, and states that he did not know what the rating meant and that he thought he was going to get better over time. A record in evidence shows that the claimant contacted the Texas Workers' Compensation Commission (Commission) on January 30, 1998, regarding the certification and was advised about the importance of disputing within 90 days if he did not agree with it and that he was advised of the designated doctor provisions. It was stipulated that the claimant did not dispute the certification within 90 days. The claimant continued to undergo some therapy and began to have pain radiate down his leg. He states his condition continued to worsen, that a CT scan was performed and that Dr. T ultimately recommended surgery. The claimant subsequently had a laminectomy on October 1, 1998.

Prior to the surgery, the claimant came to the Commission on September 28, 1998, to dispute the first rating and stated that a CT scan showed two discs instead of one. Dr. T subsequently issued a certification on September 28, 1998, rescinding his first certification. In a letter of October 14, 1998, Dr. T referred to the CT scan performed to further evaluate the bulging disc at L4-5 and which "showed the disc bulge at L4-5 and the right paracentral L5-S1 level was producing lateral canal stenosis." Dr. T indicated that the CT scan showed

that the condition had worsened and that his injury "had now progressed to the point of surgical intervention." As indicated, surgery was subsequently performed; however, claimant testified at the hearing that the surgery "broadened the window" (apparently it now takes more walking activity to reach the pain level and feeling of deadness in the leg that he had been experiencing) but that he did not think it has solved the problem, and that he is back in therapy.

The hearing officer determined that the medical evidence did not establish a clear misdiagnosis or inadequate treatment which would cause the first IR to be invalid, and thus obviate the application of the 90-day dispute provision of Rule 130.5(e). Although there is evidence that the claimant's back injury became progressively worse over the course of time and that surgery was subsequently indicated, this did not in and of itself show that there was a clear misdiagnosis or improper treatment affecting the finality provision of Rule 130.5(e). Texas Workers' Compensation Commission Appeal No. 94011, decided February 16, 1994. As the fact finder, the hearing officer evaluates the evidence and resolves any inconsistencies or conflicts including the medical evidence admitted. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In reviewing the factual findings of the hearing officer, we look to the evidence of record and only disturb such factual findings if they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). From our review of the record, we cannot so conclude here. Rather, there is sufficient evidence to support the determination that although there may have been a change in the claimant's condition to some degree after the first certification of MMI/IR, the provisions of Rule 130.5(e) still apply to the factual situation in this case. Texas Workers' Compensation Commission Appeal No. 94588 decided June 20, 1994; Texas Workers' Compensation Commission Appeal No. 94475, decided June 3, 1994. Accordingly, the decision and order are affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge