

APPEAL NO. 990535

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 4, 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 on August 28, 1997, became final. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (claimant) asserts error, urging that the treating doctor, acting on his behalf, timely disputed the first certification, citing proposed rules that would allow a treating doctor's dispute to be that of the claimant. The respondent (carrier) urges that the hearing officer's findings of fact and conclusions of law are supported by sufficient evidence and that the decision should be affirmed.

DECISION

Affirmed.

Not in dispute is the fact that the claimant sustained a compensable back injury on \_\_\_\_\_, and that the first certification of MMI and IR (14%) was rendered by Dr. Y on August 28, 1997. The issue was whether this first certification was disputed timely under Rule 130.5(e), which provides that the first certification becomes final if not disputed within 90 days. The claimant testified that he got the report and went to the office of his treating doctor, Dr. R sometime in September 1997 but did not remember when. He stated that Dr. R told him that he, Dr. R, did not agree with the certification and was disputing it. Dr. R indicated that it was his usual practice to dispute a report if he did not agree and that he was complying with the statute. He stated he discussed the report with the claimant. Dr. R also told the claimant that he needed to dispute the certification and gave him the 1-800 phone number for the Texas Workers' Compensation Commission (Commission) and indicated that his office manager subsequently told him that the claimant made the call. The claimant testified that he did not remember to whom he talked but that he told the person that he wanted to dispute Dr. Y's report and "that was it." He stated the person told him that he had to complete a form and send it to the Commission. He testified that he did not ask for a form and never got one, and that he never called or asked Dr. R about the form after that.

There were no records of the claimant's September 1997 visit to Dr. R's office but Dr. R said they do not charge every time and do not keep records of all visits. There were also no records of any phone calls by the claimant to either the Commission or the carrier during the September-December time frame to indicate a dispute of Dr. Y's certification. The carrier's current claims representative testified that there were no records or diary entries that the claimant called to dispute Dr. Y's report. Dr. R's letter of dispute dated September 15, 1997, sets forth a number of grounds for his disagreement with the report including asserted "errors, contradictions, misrepresentation, omissions and marked deviation from the Guides" (Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical

Association (AMA Guides)). He concludes by stating, "I reject his opinion in its entirety." The letter does not indicate any involvement by the claimant.

From the evidence before her, the hearing officer found that the claimant received the first certification in September 1997 and that Dr. R did not dispute the first certification on behalf of the claimant, but was filing pursuant to statutory requirements. She also found that Dr. R advised the claimant he needed to call the Commission, and there was no record that the claimant called either the Commission or the carrier in September 1997. The hearing officer concluded that the first certification of MMI and IR by Dr. Y on August 25, 1997, became final under Rule 130.5(e). In her discussion, the hearing officer notes that the Appeals Panel has indicated that a treating doctor may act as the agent of the claimant, where it is established on the record, in disputing a first certification of MMI/IR. Texas Workers' Compensation Commission Appeal No. 94519, decided June 14, 1994, decision on remand; Texas Workers' Compensation Commission Appeal No. 941195, decided October 20, 1994. Whether the evidence establishes that a treating doctor is acting on behalf of a claimant or that an effective dispute has been made is essentially a question of fact for the hearing officer's determination. Texas Workers' Compensation Commission Appeal No. 972362, decided December 29, 1997. Where a treating (or other doctor) acts on his or her own in disputing a certification of MMI/IR this does not establish a dispute by the claimant. Texas Workers' Compensation Commission Appeal No. 952151, decided February 5, 1996.

In the case before us, the hearing officer was clearly not persuaded that, under the circumstances presented, the claimant disputed the first certification or that Dr. R acted on behalf of the claimant when he disagreed with the report of Dr. Y; thus, a timely dispute was not shown. Texas Workers' Compensation Commission Appeal No. 982646, decided December 23, 1998. These were factual issues for the hearing officer's determination and any conflict in the evidence was for her to resolve. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ).

We have reviewed the evidence and cannot conclude that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, our standard of review. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. The suggestion that possible future rules of the Commission might address or alter the dispute of first certification process is not germane to the decision in this case and need not be addressed. For the reasons stated, the decision and order are affirmed.

---

Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

---

Joe Sebesta  
Appeals Judge

---

Tommy W. Lueders  
Appeals Judge