APPEAL NO. 990589

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 18, 1999. The issues at the CCH were whether 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)) and whether the appellant (claimant) had disability from an injury sustained on _____. The hearing officer determined that the first certification became final and that the claimant had disability from August 3, 1998, through September 28, 1998. The claimant appeals several findings of fact and the conclusion of law that the first certification of MMI/IR became final under Rule 130.5(e), arguing that the doctor assigning the first certification was a company doctor who was not for the employee, that she thought she was to get a second opinion and that she did not know what an IR was. 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 claimant testified that she hurt her wrist on _____, when she was lifting a case of cords and the box slipped. She tried to catch it and bent her wrist back. She went to Dr. O on March 4, 1998, was diagnosed with a wrist sprain, had x-rays taken that were read as negative, was placed on light duty, and was treated conservatively through March 24th. Dr. O certified that the claimant reached MMI on March 24, 1998, with a zero percent IR. She returned to work and states that her hand still bothered her and that she was sent back to Dr. O. The claimant states that Dr. O could not do anything for her and suggested she get a second opinion from her family doctor. She saw a Dr. S in June who diagnosed a probable healing fracture, and subsequently saw Dr. B on June 23, 1998, who diagnosed a left trigger thumb and De Quervain syndrome (tenosynovitis). A notation in Dr. B's records indicated that the claimant had trigger thumb surgery "some years ago." The claimant was referred to a Dr. L, a hand specialist. The claimant was scheduled for other unrelated surgery and it was decided to do surgery on her left wrist at the same time. The surgeries took place on August 3, 1998, and the claimant returned to work on September 25, 1998.

The first certification of MMI/IR by Dr. O was sent to the claimant with a letter of explanation dated April 7, 1998. The claimant acknowledged receiving this correspondence within a week. The claimant testified that she misunderstood the procedure and that she did not dispute the first certification until September 16, 1998. The evidence was not clear as to whether the claimant was not able to work from August 3, 1998, to September 25, 1998, as a result of the wrist surgery or the other surgery or a combination of the two. However, this matter is not on appeal.

The hearing officer determined from the evidence before her that there was no dispute of the first certification of MM/IR within the 90-day provisions of Rule 130.5(e), and

that the evidence did not establish a new, previously undiagnosed medical condition or improper or inadequate treatment which would render the certification invalid. Clearly there was sufficient evidence that the claimant was properly notified of the first certification and did not dispute it within 90 days. That, as she claims, she misunderstood the procedures does not alter or prevent the finality provision of the rule. Texas Workers' Compensation Commission Appeal No. 960540, decided May 1, 1996. And, as she states, she continued to have problems with her hand and, further, did not dispute the rating even after different conditions (within the 90-day period) and treatment were recommended. This is not a sufficient basis to invalidate the first certification of MMI/IR. Texas Workers' Compensation Commission Appeal No. 960171, decided March 7, 1996; Texas Workers' Compensation Commission Appeal No. 972381, decided December 31, 1997. We have reviewed the record and admitted 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. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge