APPEAL NO. 990615

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 3, 1999, a hearing was held. The hearing officer determined that the initial impairment rating (IR) became final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). Appellant (claimant) asserts that written notice of the initial IR did not provide how and when to dispute that rating when claimant "continues to work" and does not explain what to do with an undiagnosed condition. Claimant also states that she has not reached maximum medical improvement (MMI) and needs an IR that considers all of her injuries. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____, when she slipped and fell at work injuring her knee and what she at first thought was her hip. Claimant was treated by Dr. S. He treated her knee and stated on December 17, 1997, that she reached MMI on December 11, 1997, with a 2% IR. Claimant testified that Dr. S only treated her knee and that the IR he gave was only for the knee. Dr. S's records in evidence confirm claimant's statement that he only treated the knee, and also showed that he restricted his practice to the upper and lower extremities.

Claimant agreed that she received written notice of the initial IR on December 19, 1997. She also agreed that she disputed the initial IR on June 16, 1998.

Claimant testified that she knew she noticed pain in her hip "immediately when I fell." She also told Dr. S of her hip pain. She first saw Dr. C for what she thought was her hip on January 13, 1998. When Dr. C ruled out a hip injury, claimant saw a "back specialist" on February 25, 1998. He received MRI results and discussed them with claimant on March 11, 1998; that MRI showed a herniated disc at L4-5. Claimant also testified that she had lumbar surgery on December 8, 1998. Claimant argued at the hearing that Dr. S only considered the knee in giving his IR, that she did not learn of the correct diagnosis relative to the back at the time of the IR and did not know "the full extent of the injury to her back" until October 19, 1998, when a discogram was done. Both parties cited Appeals Panel decisions.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. She could consider Texas Workers' Compensation Commission Appeal No. 941748, decided February 13, 1995, which said that a claimant who knows that part of the compensable injury was not rated in the initial IR is required to dispute the rating within 90 days to have the omitted injury considered in the IR. Texas Workers' Compensation Commission Appeal No. 960831, decided June 17, 1996, stated that when there is a misdiagnosis (in that decision a doctor found that the injury completely resolved

with no impairment) and claimant learns that he has a herniated disc about a year later, then the fact finder's determination that the initial IR did not become final could be affirmed. Texas Workers' Compensation Commission Appeal No. 982609, decided December 23, 1998, is cited by carrier, but that case dealt with a determination by a hearing officer that a misdiagnosis was made. This case does not deal with a misdiagnosis by Dr. S; according to claimant, he represented himself to be an extremities doctor and did not provide a diagnosis of any hip or low back condition.

The notice to claimant of the initial IR does not contain any instructions relative to a claimant that continues to work or relative to an undiagnosed condition. (We note also that although claimant says she did not know the full extent of the back injury, the evidence shows that she knew she had a herniated disc at L4-5 on March 11, 1998, within the 90 days provided for disputing after notice was received on December 19, 1997.) We also note that Rule 130.5(e) does not even provide for notice to be given to a party; the Appeals Panel has required that notice of the initial IR be given and that such notice be written; in addition, a Texas Workers' Compensation Commission (Commission) form now provides in a notice of the initial IR, that it is "a whole body [IR]." We cannot say that the notice was insufficient because it did not provide further explanation relative to the circumstances that claimant sets forth in her appeal. A telephone call to the Commission within the last eight days of that time period after the results of the lumbar MRI were known could have disputed the initial IR. The hearing officer's determination that the initial IR became final is sufficiently supported by the evidence.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Elaine M. Chaney
Appeals Judge