APPEAL NO. 990891

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 April 1, 1999. The issue at the CCH was stated as whether the first certification of maximum medical improvement (MMI) and the impairment rating (IR) assigned to the appellant (claimant) by Dr. S on May 26, 1998, became final under Rule 130.5(e).

The hearing officer found that the certification of IR and MMI became final because the claimant did not dispute it within 90 days after it was received, and that he reached MMI on May 22, 1998, with a zero percent IR.

The claimant appeals, arguing that he never received notice of the first IR. He argues that Dr. S did not even examine him the date he certified MMI. The respondent (carrier) responds that the facts asserted in the appeal are not proven and that the claimant did not even seek medical treatment for his finger until laid off in December 1998, when he disputed the IR.

DECISION

Affirmed.

The claimant was employed by the employer, a certified self-insured, and said that on _____, his ring finger began to get sore and lock up. He was treated by Dr. S on several occasions. He took short leave to go to the doctor but did not lose days from work. He worked until December 4, 1998, at which time he was laid off. He did not seek medical treatment after May 26, 1998, although he "talked" with persons for the employer about medical treatment. He contacted the third party administrator in December 1998 after his layoff. Dr. S filed a Report of Medical Evaluation (TWCC-69) on May 26, 1998, in which he certified that the claimant reached MMI on May 22, 1998, with a zero percent IR.

The claimant contended that he never received any letter from the carrier forwarding the TWCC-69 or indicating he had a zero percent IR and that the first he saw the TWCC-69 was when the Texas Workers' Compensation Commission (Commission) forwarded it in December 1998. He said he had already disputed it after speaking to someone at the Commission.

A report from the third party administrator for the self-insured, dated July 2, 1998, notes that the TWCC-69 was mailed that same day to the claimant. The adjuster who made the note, Ms. B, supported this with her testimony. A further note dated December 11, 1998, shows that the claimant acknowledged receipt of this letter but he did not recall it's saying anything about 90 days to dispute and he said it was not, in any case, sent certified. Ms. B said she may have initially told the claimant it was sent certified because she did not realize right away that this was a "medical only" claim.

Ms. P, who said she was responsible for sending out the TWCC-69s to "medical only" claimants, testified about her usual procedure which she would have employed in sending Dr. S's TWCC-69 to the claimant. Ms. P said she had no doubt that this was mailed to the claimant. She acknowledged it would have been by regular mail, because it was a "medical only" claim, to the address indicated on the claim. The claimant agreed that his address was that indicated on the cover letter to the TWCC-69, which cover letter also informed the claimant of the 90-day dispute deadline.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer evidently believed that the claimant was mailed the copy of the TWCC-69 and advised to dispute within 90 days. The significance of the IR may not have been apparent to the claimant until he was laid off. There is no requirement that notice be mailed certified to a claimant (although it may go far in resolving disputes such as this). The hearing officer's decision in this case is supported by the record herein. We therefore affirm his decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge