APPEAL NO. 990947

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 13, 1999. The issue at the CCH was whether the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. G became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The hearing officer determined that the first IR purportedly certified by Dr. G is invalid since the report dated April 9, 1998, was not authored or authorized by Dr. G, and did not become final; that the respondent (claimant) timely disputed the Report of Medical Evaluation (TWCC-69) purportedly certified by Dr. G within 90 days of first receiving written notice; and that the TWCC-69 form purportedly certified by Dr. G did not become final under Rule 130.5(e) because of a clear misdiagnosis and inadequate treatment of the claimant's injury. The appellant (carrier) appeals, urging that the first IR issued was valid and was not rescinded until after the 90 days had lapsed, and there is no clear misdiagnosis. The claimant responds, urging the hearing officer's determinations are sufficiently supported by the evidence and should be affirmed.

DECISION

Affirmed.

The claimant testified that he sustained an injury on _____, when he slipped off of a pallet and twisted his left ankle. The claimant testified that he received medical treatment from Dr. T who took x-rays and referred him to Dr. G. The medical records indicate that the claimant saw Dr. G on March 9, 1998, and April 2, 1998. According to the claimant, Dr. G put his ankle in a soft cast, prescribed medication, and took him off work until April 12, 1998. The claimant testified that he subsequently returned to work, but the pain in his ankle persisted and he returned to see Dr. G in November 1998. Dr. G referred the claimant to Dr. H who ordered an MRI. The MRI performed on December 15, 1998, showed chronic full-thickness tears of the anterior talofibular and calcancofibular ligaments. Dr. H referred the claimant to Dr. M, who performed a left ankle arthroscopy on February 9, 1999. The postoperative diagnosis indicates severe scar tissue formation, anterolateral greater than anteromedial joint.

The claimant testified that the first time he saw the TWCC-69 purportedly certified by Dr. G or knew of a zero percent IR was at the February 16, 1999, benefit review conference (BRC). The claimant testified that after the BRC, he took the TWCC-69 form to Dr. G and Dr. G told him that he did not write the TWCC-69. Dr. G issued a letter on March 4, 1999, which states:

> I saw [claimant] in the office this morning and I need to clarify the TWCC-69 form that was filled out by our Workers' Compensation department. This form was filled out erroneously and without my knowledge. A signature stamp was used to complete the form again without my knowledge. The

> confusion is with the [MMI] section and the [IR] section. Under section 17 it was typed that no [IR] was given and [claimant] went back to work as of 4-12-98. This was true since I do not do [IRs] and is usually done by Work Ready. This was filled out erroneously. Also under section 18 [claimant] was given total body [IR] of 0.00%. This was again filled out erroneously by someone in our Workers' Comp. Dept. They are not qualified to give these ratings.
>
> Unfortunately this form was filled out and filed without my knowledge and I was not aware of this until you contacted me on January 5, 1999. In light of the MRI report dated Dec. 15 and his subsequent surgery in February of 1999 the TWCC-69 form that was previously filed is inaccurate. This unfortunate situation has been addressed with members of our Workers' Compensation Dept. and I hope this letter will help correct the problem you are having with [claimant's] WC carrier.

Rule 130.5(e) provides that the first IR assigned to an injured worker will become final if not disputed within 90 days after the doctor assigned it. The 90 days run from the date the parties become aware of the rating. Texas Workers' Compensation Commission Appeal No. 92693, decided February 8, 1993. Texas Workers' Compensation Commission Appeal No. 93489, decided July 29, 1993. The Appeals Panel has previously addressed a situation where a doctor's stamped signature was not authorized on a TWCC-69. In Texas Workers' Compensation Commission Appeal No. 970103, decided February 28, 1997, we reversed and rendered the decision of the hearing officer, after determining that the great weight and preponderance of the evidence indicated that a doctor did not sign the TWCC-69 nor direct office staff to apply his signature stamp to the TWCC-69. In that case, we viewed the TWCC-69 as unsigned and not a valid certification of MMI and assignment of an IR which could become final under Rule 130.5(e). *See* Texas Workers' Compensation Commission Appeal No. 970898, decided June 27, 1997.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and 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).

The hearing officer determined that the IR purportedly certified by Dr. G is invalid since it was not authored or authorized by Dr. G and it did not become final by operation of Rule 130.5(e). A certification of MMI and IR must be made by a "doctor." Section 408.123(a); Rule 130.1(a). It was up to the hearing officer, as the finder of fact, to determine whether Dr. G made a certification. We find the evidence sufficient to support the determination of the hearing officer that the first IR is invalid and did not become final by operation of Rule 130.5(e). Since we conclude there is sufficient evidence to support

the determination of the hearing officer on the basis indicated, it is not necessary, and we do not consider, the alternate theories of timely dispute of the first TWCC-69, and clear misdiagnosis and inadequate treatment of the claimant's injury.

The decision and order of the hearing officer are affirmed.

_____
Dorian E. Ramirez
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Joe Sebesta
Appeals Judge