APPEAL NO. 990967

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On April 8, 1999, a hearing was held. She (hearing officer) determined that appellant (claimant) has an impairment rating (IR) of zero percent as found by the initial IR of Dr. P, provided on December 4, 1996, pursuant to the terms of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). Claimant asserts that he disagrees with certain findings of fact and indicates that he wants the decision--the initial IR became final--to be reversed. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____, the day, he testified, a forklift struck his right knee against a pallet jack. He saw Dr. P (referred to as the company doctor) and did not work for 15 days, after which time he returned to restricted work and then to unrestricted work on November 20, 1996. Dr. P noted that an x-ray was negative on _____, and that there was no swelling on October 31, 1996. He considered having an MRI done but did not order one. On November 6, 1996, Dr. P wrote that claimant said the knee was better; Dr. P provided a support for the knee. On November 13, 1996, Dr. P noted that claimant was able to squat without problems, had good range of motion (ROM), and had "only slight" discomfort with popliteal palpation. Then on November 20, 1996, Dr. P said that the right knee was stable, ambulation was satisfactory, ROM was "OK," and he said there was no IR although he noted that claimant now squatted with difficulty. Dr. P's Report of Medical Evaluation (TWCC-69) dated December 4, 1996, said that maximum medical improvement (MMI) was reached on November 20, 1996, with a zero percent IR.

Claimant agreed that he worked full time from November 20, 1996, until May 1998 without seeing a doctor again until May 1998. Mr. P, a sales manager for employer, testified that he saw no problems in claimant's work throughout 1997, but said that claimant began to complain of a knee problem in February 1998. Mr. P said that claimant no longer worked for employer after May 1998. Mr. P also said that claimant told him, in the early 1998 time frame, that he had injured his knee on a bumper of a car.

The record contains a copy of a Texas Workers' Compensation Commission (Commission) letter dated February 26, 1997, which was sent to carrier, which indicated that the date of MMI was November 20, 1996, and the IR was zero percent; it also said a copy had been sent to claimant. With Rule 102.5(h) providing a five-day deemed receipt for notices to and from the Commission, and with claimant asserting no change in his address having occurred by February 26, 1997, the hearing officer was sufficiently supported in deeming that claimant received notice of the initial IR from the Commission by March 3, 1997. (A finding of fact that says May 3, 1997, is changed to read March 3, 1997.)

Claimant's position was that he received the first notice of the initial IR in May 1998 from an attorney that he saw at that time. He then disputed the IR in July 1998 when he requested a benefit review conference. The hearing officer's finding of fact that claimant did not dispute the initial IR until July 1998 is also sufficiently supported by the evidence.

In this case, claimant relies on the opinion of Dr. D, who performed surgery to the right knee on June 29, 1998. He said on June 17, 1998, that since his injury claimant has had pain, swelling, recurrent locking, and giving way involving the right knee. He considered an MRI of the right knee dated June 15, 1998, as showing "effusion with increased signals to the posterior of the medial meniscus." He then diagnosed a torn medial meniscus and chondromalacia of the patella.

The carrier pointed out at the hearing that the MRI of 1998 was ordered by claimant's treating doctor at the time, Dr. H, D.C. and was reported by Dr. L as showing an "intact" lateral meniscus and a medial meniscus showing degeneration but "no tear." Otherwise, "mild degenerative change of the femoropatellar joint with grade I chondromalacia along the margin of the patella was shown." There were no abnormalities with the knee ligaments.

At surgery in late June 1998, Dr. D did find a torn meniscus and a dislocated patella. He then wrote on August 27, 1998, that Dr. P did "not perform the appropriate diagnostic and clinical tests." He also said, "[i]f Dr. P had done the appropriate clinical and diagnostic studies, the tear to the menisci and other injuries would have been found."

The carrier had Dr. T examine claimant in January 1999. He stated that the 1998 MRI report of Dr. L did not mention a meniscus tear or any meniscus abnormality; he also commented that Dr. D's findings in surgery "seem inconsistent with this [18 months of work without medical care] benign course." He said that he doubted that the observations made at surgery "were reflective of his condition when released in November 1996."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. Her Statement of Evidence considers the varying evidence in a logical and reasonable way such that added explanation by this writer would add nothing. Suffice it to say that the hearing officer noted the MRI of 1998 appeared to show little in the way of a torn meniscus and questioned how an MRI in 1996 would have led to any conclusion but that reached by Dr. P at the time. She found that the diagnosis in the MRI (of 1998) was not significantly different from that given by Dr. P in 1996. Based on her prior findings concerning the date the Commission sent notice of the initial IR to claimant and claimant's deemed date of receipt, together with the finding of fact just discussed, the hearing officer was sufficiently supported in concluding that claimant's initial IR became final under Rule 130.5(e), so that MMI was reached on November 20, 1996, with an IR of zero percent.

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:

_____
Philip F. O'Neill
Appeals Judge

_____
Alan C. Ernst
Appeals Judge