APPEAL NO. 991517

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 June 29, 1999. She (hearing officer) determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. B on April 16, 1997, (the first certification), became final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). Appellant (claimant) appeals, contending that the first certification was invalid because it had no date of injury, there was no attached report, he saw Dr. B only once, and Dr. B looked at and said he would rate only claimant's shoulder. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

The record reflects that on April 16, 1997, Dr. B certified that claimant reached MMI on March 10, 1997, with a zero percent IR. Claimant did not assert at the CCH or on appeal that he disputed the first certification within 90 days.

The hearing officer determined that: (1) claimant received Dr. B's April 16, 1997, Report of Medical Evaluation (TWCC-69) no later than May 5, 1997; (2) neither party disputed the first certification within 90 days; and (3) the first certification became final pursuant to Rule 130.5(e).

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-day period starts to run from the date the parties become aware of the rating. Texas Workers' Compensation Commission Appeal No. 92693, decided February 8, 1993. The fact that a party was not aware of the 90-day rule does not excuse the failure to comply with the rule. Texas Workers' Compensation Commission Appeal No. 94269, decided April 20, 1994. The fact that further treatment is needed does not mean that a first certification cannot be final. Texas Workers' Compensation Commission Appeal No. 970020, decided February 7, 1997.

In Rodriguez v. Service Lloyds Insurance Company, 42 Tex. Sup. Ct. J. 900 (July 1, 1999) (motion for rehearing filed), the Texas Supreme Court considered whether there are any exceptions to Rule 130.5(e). The court's majority opinion stated that: (1) "[t]he plain language of the 90-day Rule does not contain exceptions"; (2) "[t]he Rule's language is consistent with the Commission's [Texas Workers' Compensation Commission's] intent"; (3) "in interpreting this rule . . . the Commission's appeals panels have created exceptions"; and (4) "given the language and intent of the 90-day Rule, we cannot recognize the exceptions to the 90-day Rule that [the injured worker] pleads, including substantial change of condition."

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of 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. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

From the evidence, the hearing officer could determine that there was no dispute by claimant within the 90-day period and that the first certification became final. The hearing officer could find from the evidence that the TWCC-69 was returned to Dr. B's office so that the date of injury could be written in, and that this was accomplished before the TWCC-69 packet from carrier was sent to claimant. The hearing officer determined that the TWCC-69 was not facially invalid and noted that it contained a date of injury. Regarding the complaints that Dr. B did not rate the entire injury, that he saw claimant only once, and that he did not file an accompanying report, claimant was required to raise any complaints in this regard within the 90 days. We have reviewed the record and we conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

_____
Judy Stephens
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge