APPEAL NO. 991581

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 30, 1999. The single issue at the CCH was whether the first assignment of maximum medical improvement (MMI) and impairment rating (IR) dated January 22, 1997, was final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The hearing officer determined that it was final and the appellant (claimant) appeals, urging that the evidence showed that the claimant did not receive the first assignment of MMI/IR of January 22, 1997, and that even if he had received the first assignment, it did not give him notice of his rights and duties, thus violating due process. The respondent (carrier) urges that there is sufficient evidence to support the decision of the hearing officer and points out that in addition to being sent a copy of the MMI/IR from the rating doctor, the evidence also shows that the Texas Workers' Compensation Commission (Commission) sent a letter (EES-19) to the claimant on January 28, 1997, concerning the rating and the rights of the parties. Carrier further discounts the due process assertion on appeal, pointing out that ignorance of the requirement of the law to timely dispute is irrelevant.

DECISION

Affirmed.

An affidavit from EH, manager of Medical Evaluation Specialists, the organization by which the first assessment of MMI/IR was performed, states that she mailed a copy of the evaluation to the claimant on January 22, 1997, at the correct address for the claimant. She also stated that the mailing to the claimant was never returned undelivered and that she also sent copies of the report to the claimant's treating doctor and the Commission, verified from computer records. Records from the Commission's computer log (Dispute Resolution Information System) show that a copy of an EES-19 letter dated January 28, 1997, was sent to the claimant advising him of the assessment of MMI/IR and advising him what steps to take if he had any disagreement.

Claimant testified that he never received any report or communication about the assessment of MMI/IR, and that he was unaware of it until about a month to a month and one-half ago at his attorney's office. He stated that he lived in a small town and that about the time of January 1997, they had problems with mail being delivered late or misdirected and that eventually the postmaster was replaced because of irregularities and competency complaints. He also indicated that his wife and the postmaster ran against each other in a city council election. He acknowledged that at this same time he did receive checks for temporary income benefits from the carrier and that he got his bills, although sometimes late.

The hearing officer was convinced from the evidence that the claimant received the report of the first MMI/IR not later than February 3, 1997, and that it was not disputed within 90 days therefrom. Clearly, credibility played an important role in the factual determinations

of the hearing officer and it is apparent that he did not find convincing the claimant's testimony denying receipt and his explanation for not receiving the report. The hearing officer was not required to accept the claimant's testimony at face value (Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ)), and where, as in this case, there was conflict in the evidence, it was for the hearing officer to resolve any such conflicts or inconsistencies and arrive at findings of fact. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Given the affidavit of EH, the computer records from the Commission, and the notations on the copies of the report and the EES-19 letters in evidence that a copy of each had been mailed to the claimant, there was a sufficient evidentiary basis for the findings, conclusions, and decision reached by the hearing officer. While the claimant's testimony was in conflict, we cannot conclude that it represented the great weight and preponderance of the evidence as to render the hearing officer's factual determination clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). Further, we do not find the claimant's assertion of a lack of due process in not being aware of the requirements to dispute a first assessment of MMI/IR in accordance with the statute and rules. Texas Workers' Compensation Commission Appeal No. 941678, decided January 30, 1995. Finding no prejudicial error and sufficient evidence to support the findings, conclusions, and decision of the hearing officer, we affirm the decision and order.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Susan M. Kelley
Appeals Judge