

APPEAL NO. 991685

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 July 20, 1999. He (hearing officer) determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. H on March 27, 1998 (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 there was a misdiagnosis of his condition. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

The record reflects that on March 27, 1998, Dr. H certified that claimant reached MMI on March 27, 1998, with a nine 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. H's March 27, 1998, Report of Medical Evaluation (TWCC-69) no later than April 15, 1998; (2) claimant did not dispute 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. In Rodriguez v. Service Lloyds Insurance Company, 42 Tex. Sup. Ct. J. 900 (July 1, 1999) (motion for rehearing denied), 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. Regarding the

complaint that there was a misdiagnosis, a misdiagnosis would not prevent the first certification from becoming final. Claimant was required to raise any complaints in this regard within the 90 days. We also reject claimant's contention that the Rodriguez case does not apply because it was not decided until July 1, 1999. 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:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge