APPEAL NO. 992013

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 August 19, 1999. He (the hearing officer) determined that: (1) the first certification of impairment rating (IR) and maximum medical improvement (MMI) assigned by Dr. C on July 1, 1998 (the "first certification"), became final pursuant to the 90-day rule (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)); (2) appellant (claimant) reached MMI on June 26, 1998; (3) claimant's IR is zero percent; and (4) claimant had disability from March 19, 1999, to the date of the CCH. Claimant appeals the IR, MMI, and 90-day rule determinations on sufficiency grounds. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order. Neither party appealed the disability determination.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that Dr. C's first certification of a zero percent IR became final under the 90-day rule. Claimant first contends that there was no valid certification of IR and MMI because Dr. C did not sign the Report of Medical Evaluation (TWCC-69) certifying the zero percent IR. Claimant complains that Dr. C signed the TWCC-69 saying he "agreed" with the IR but did not also indicate by the signature that he agreed with the MMI date.

The hearing officer determined that claimant injured his "back and low back [sic]" on _____, when his dozer turned over. Claimant said he also had stitches to his head. Claimant said Dr. C treated his back injury and that he has now been diagnosed with a herniated disc. Claimant testified that he did not receive written notice of the first certification from Dr. C until the July 21, 1999, benefit review conference. There was evidence that claimant's mother signed for a certified mailing from carrier on July 10, 1998. The hearing officer determined that on July 7, 1998, carrier mailed a copy of Dr. C's TWCC-69 along with a Notification Regarding Maximum Medical Improvement and/or Impairment Rating (TWCC-28) to claimant's address explaining that a dispute must come within 90 days. Claimant said his mother lives next door to him and that she sometimes signs for his mail, but that he never received this written notice of the first certification.

Dr. C's July 1, 1998, TWCC-69 does not have his signature on line 20 where it states "signature of doctor." Dr. C checked the box on line 19 indicating that he is the treating doctor and signed on line 23 where it states "signature of treating doctor." He also checked the box that states "I AGREE with the above doctor's assigned [IR]." The TWCC-28 in evidence did not state claimant's case number, but stated that carrier received a report from Dr. C certifying a zero percent IR and explaining what claimant should do if he disagreed with the certification of MMI and IR.

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 receive written notice of the rating. Texas Workers' Compensation Commission Appeal No. 92693, decided February 8, 1993. A TWCC-69 normally provides written notice of the first IR, but a writing that amounts to the "functional equivalent" of a TWCC-69 will suffice as written notice. Texas Workers' Compensation Commission Appeal No. 961257, decided August 5, 1996. 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.

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.

We have reviewed the TWCC-69 and the TWCC-28 in evidence and we conclude that the hearing officer did not err in determining that there was sufficient and valid written notice of the first certification for the purposes of the 90-day rule. Although Dr. C did not sign the TWCC-69 on line 20, he did sign the TWCC-69 and also indicated his agreement with what is actually his own IR certification. Even though Dr. C did not also check the box stating that he "agreed" with his own certified date of MMI, the hearing officer could still determine that this TWCC-69 constituted sufficient written notice to claimant for the purposes of the 90-day rule.

Claimant next contends that the hearing officer erred in determining that claimant received written notice of the first certification no later than July 15, 1998. He asserts that he never received such written notice until July 21, 1999, and that carrier proved only that his mother received written notice of the first certification. However, claimant testified that the notice mailed by carrier was properly addressed to his home address, that his mother sometimes signed for his mail, and that her signature appears on the notice from carrier with a date of July 10, 1998. The hearing officer could and did find from the evidence that claimant received written notice of the first certification no later than July 15, 1998. *See* Texas Workers' Compensation Commission Appeal No. 960540, decided May 1, 1996. The hearing officer heard claimant's testimony that he did not receive the written notice signed for by his mother and determined the weight and credibility to give to this evidence. From the evidence, the hearing officer could determine that there was no valid dispute by claimant within the 90-day period and that, because of this, the first certification became final under the 90-day rule. 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. Because we have affirmed the determinations regarding the 90-day rule, we also conclude that the hearing officer's determinations regarding claimant's IR and MMI

date are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

We affirm the hearing officer's decision and order.

_____
Judy Stephens
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Alan C. Ernst
Appeals Judge