APPEAL NO. 992021

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 17, 1999. With respect to the sole issue before him, the hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. H on May 17, 1995, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (claimant) appeals, urging that he did not have knowledge of Dr. H's Report of Medical Evaluation (TWCC-69) until March 1999 and requesting that the Appeals Panel "request the certified letter green card." The respondent (carrier) replies that the hearing officer's decision is not so against the great weight and preponderance of the credible evidence as to be manifestly unjust and should be affirmed.

DECISION

Affirmed.

Dr. H issued a TWCC-69 on May 17, 1995, certifying that the claimant reached MMI on May 8, 1995, with a zero percent IR. The claimant testified that he injured his shoulder at work on _____; that he received medical treatment from Dr. H twice, once on May 8, 1995; that Dr. H moved her office and he could not find her after looking two or three months; that he went to the VA Hospital for treatment; that he went to the Texas Workers' Compensation Commission (Commission), told them that he could not find Dr. H, and was told that she was the treating doctor and he needed to see her; that he finally located Dr. H and was told by her office that she did not accept workers' compensation; that it took a year or two before the Commission told him that he needed to file a change of treating doctors; that he changed doctors to Dr. SH in May 1998, who referred him to Dr. SA; that it was not until he went to the Commission on March 8, 1999, that he was told that Dr. H had issued a TWCC-69 certifying MMI and IR; and that he immediately disputed Dr. H's certification on March 8, 1999. The claimant asserts that he never received Dr. H's TWCC-69, that the Commission did not send notice of Dr. H's certification to him, and that he did not receive written notice of Dr. H's certification from the carrier.

The carrier states that the Commission and the carrier both received a copy of Dr. H's TWCC-69 in 1995. The carrier asserts that after 1995, the claimant's claim was closed because no medical reports were received, and after it received a medical report from Dr. SA, it discovered that it had not sent out a Notification Regarding Maximum Medical Improvement and/or Impairment Rating (TWCC-28). The carrier submitted an affidavit from the handling adjuster to support its position that a TWCC-28 with an attached TWCC-69 was sent by certified mail to the claimant on August 12, 1998. The carrier argues that although it cannot locate a green card indicating receipt, it was placed in the mail, and there is a presumption that the claimant received it. It is the carrier's position that the claimant

received written notice of Dr. H's certification in August 1998; failed to dispute it until March 8, 1999; and the certification has become final.

Rule 130.5(e) provides that the first IR assigned to an employee is considered final if the rating is not disputed within 90 days after the rating is assigned. The Appeals Panel has held that the 90-day period begins to run from the date that the party receives notice of the certification of MMI and IR in writing. Texas Workers' Compensation Commission Appeal No. 94354, decided May 10, 1994. Whether a party actually received notice is a fact issue for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 93308, decided June 4, 1993; Texas Workers' Compensation Commission Appeal No. 950319, decided April 14, 1995. The Appeals Panel has recognized that service by mail, properly addressed, is complete upon deposit in a post office or other official mail depository and that there might be a presumption of regularity if sent by regular mail. Texas Workers' Compensation Commission Appeal No. 94365, decided May 11, 1994.

The hearing officer found that on August 12, 1998, the carrier sent the claimant a copy of Dr. H's TWCC-69, that the claimant received the TWCC-69 from the carrier not later than August 17, 1998, and that the claimant first disputed Dr. H's certification on March 8, 1999. The carrier presented evidence that it had mailed a TWCC-28 and Dr. H's TWCC-69 by certified mail to the claimant on August 12, 1998. Although the carrier did not produce a green card indicating receipt, the hearing officer could find that the documents were received by the claimant. The claimant's appeal requests that the Appeals Panel obtain the green card which will not bear his signature. The Appeals Panel generally reviews only the record and evidence developed at the CCH. Texas Workers' Compensation Commission Appeal No. 93682, decided September 20, 1993; Section 410.203.

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 overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Applying this standard of review to the record of this case, we find the evidence sufficient to support the hearing officer's determination that Dr. H's certification of MMI on May 8, 1995, with a zero percent IR is considered final under Rule 130.5(e).

The decision and order of the hearing officer are affirmed.

_____
Dorian E. Ramirez
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge