APPEAL NO. 000168

A contested case hearing was originally held on September 1, 1999, under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 992179, decided November 15, 1999, the Appeals Panel reversed the decision of the hearing officer and remanded for the hearing officer to determine whether the appellant (claimant) ratified his treating doctor's dispute of the first certification of maximum medical improvement (MMI) and impairment rating (IR). The hearing officer held another hearing on December 29, 1999, and rendered another decision on December 31, 1999, in which she determined that the claimant did not ratify his treating doctor's nonconcurrence with the first certification of MMI and IR and that the claimant reached MMI on May 19, 1998, with a four percent IR as stated in the first certification of MMI and IR. The claimant appealed, contended that he ratified his treating doctor's disagreement with the first certification of MMI and IR within 90 days of having received the first certification, stated his disagreement with other determinations of the hearing officer that were affirmed in Appeal No. 992179, urged that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the first certification of MMI and IR did not become final under the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The respondent (carrier) responded, commented on the doctrine of ratification, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

In its remand, the Appeals Panel stated that another hearing should be held, additional evidence should not be accepted, and the parties should be given the opportunity to present argument. At the hearing on remand, the hearing officer and the attorneys representing the parties were involved in a discussion. Many of the comments did not assist in resolving the questions that the hearing officer was asked to resolve. After the discussion, each party presented argument.

The evidence is summarized in Appeal No. 992179, *supra*, and in the Decision and Order on Remand of the hearing officer. The hearing officer commented on the claimant's change of his version of what occurred concerning the dispute of the first certification of MMI and IR. She did not find the claimant's testimony to be credible and made a finding of fact that he did not ratify his treating doctor's nonconcurrence with the first certification of MMI and IR. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. In a

case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer listed 23 Appeals Panel decisions concerning Rule 130.5(e) and ratification. There is no indication that she did not properly apply the law to the facts. The appealed determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge