APPEAL NO. 000278

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 January 21, 2000. In response to the issue at the CCH, the hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. G on October 20, 1998, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (rule 130.5(e)). The appellant (claimant) appealed, contending that the first certification did not become final. The respondent (carrier) responds, urging affirmance.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that the first certification became final pursuant to Rule 130.5(e), the "90-day rule." Claimant asserts that: (1) the first certification was disputed by carrier within 90 days when carrier filed its November 3, 1998, Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21); (2) her employer gave her incorrect information that she could not timely dispute her IR; and (3) the first certification is void because Dr. G rescinded it.

It was undisputed that claimant sustained a compensable left knee injury on _____. On October 20, 1998, Dr. G certified that claimant reached MMI on October 14, 1998, with a two percent IR for impairment to her left knee. Claimant's interrogatory answers indicate that she sustained a compensable left knee injury when she tripped over some mats. The record contains an "EES-19" letter addressed to claimant and dated October 29, 1998, that states that Dr. G certified a two percent IR and an MMI date of October 14, 1998. Claimant testified that she did not remember the date that she received written notice of the first certification. A Dispute Resolution Information System (DRIS) note dated November 12, 1998, states that claimant called the Texas Workers' Compensation Commission (Commission) and that a Commission employee and claimant "went over TWCC 69 [received] from [Dr. G]." The DRIS note stated that the employee explained "MMI and IR" to claimant and that "[claimant] does not want to dispute at this time." The next call from claimant logged in to the DRIS system is dated April 12, 1999, and states that claimant said the right to dispute had never been explained to her. Carrier filed a TWCC-21 dated November 3, 1998, that stated, "carrier disputes [claimant's] entitlement to [temporary income benefits (TIBS)]. [Claimant returned to work] 6/8/98 therefore there is no compensable lost time. Carrier received EES.19 from [Dr. G] . . . . Carrier has requested and received TWCC-69 from [Dr. G] and sent same to treating doctor . . . for concurrence." A medical note, apparently from Dr. G, dated April 7, 1999, states that "MMI has been rescinded as the pain continuum dictated that [claimant] undergo a total knee replacement . . . ."

The hearing officer determined that: (1) Dr. G was the first doctor to certify MMI and IR; (2) claimant received the first certification at least by November 12, 1998; (3) claimant did not dispute the first certification until April 12, 1999; (4) the TWCC-21 filed by carrier was not a dispute of the first certification; and (5) the first certification became final pursuant to the 90-day rule.

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 that written notice is received. Texas Workers' Compensation Commission Appeal No. 92693, decided February 8, 1993. The Appeals Panel has frequently held that the first certification doctor may rescind a first certification if it is rescinded within 90 days of when it was assessed. Texas Workers' Compensation Commission Appeal No. 990056, decided February 24, 1999; Texas Workers' Compensation Commission Appeal No. 970021, decided February 20, 1997; Texas Workers' Compensation Commission Appeal No. 000065, decided February 24, 2000.

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 evidence in this case and claimant's contentions abut the TWCC-21. We conclude that the hearing officer's determination that there was no valid dispute within 90 days is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. Regarding claimant's contention that her employer told her she could not dispute her IR and her case was "closed," we have stated that ignorance of the law does not justify or excuse noncompliance with the requirements of Rule 130.5(e). Texas Workers' Compensation Commission Appeal No. 94269, decided April 20, 1994. Reliance on misinformation does not excuse the failure to dispute pursuant to the 90-day rule, especially where, as here, the Commission gave the claimant correct written advice about the application of Rule 130.5(e) in the form of the "EES-19" letter. *See* Texas Workers' Compensation Commission Appeal No. 970305, decided April 7, 1997. Regarding Dr. G's rescission letter, we note that this rescission was not accomplished within the 90-day period. Therefore, the first certification became final because there was no rescission within 90 days. 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.

We affirm the hearing officer's decision and order.

_____
Judy L. Stephens
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge