APPEAL NO. 000336

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 18, 2000. The hearing officer determined that the preponderance of the evidence submitted by the appellant (claimant) does not show or otherwise establish that the claimant disputed, either orally or in writing, the finding of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. A on January 7, 1999, and, thus, the finding is considered final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The claimant appeals, urging that "[a]s noted in the Statement of Evidence, my treating doctor disagreed with the [IR] and MMI date given by the carrier's doctor, [Dr. A]; that he disputed the MMI date and IR assigned by Dr. A in a letter to and conversations with the Texas Workers' Compensation Commission (Commission); that the hearing officer did not take into account the totality of the evidence, circumstances, and testimony in reaching her decision; and that the hearing officer's decision is manifestly unjust and against the great weight and preponderance of the evidence. The respondent (carrier) replies that the hearing officer's decision is supported by the evidence and should not be reversed, and that the hearing officer's decision does not indicate that the claimant's treating doctor disagreed with the MMI and IR assigned by Dr. A.

DECISION

Affirmed.

It is undisputed that Dr. A issued the first certification of MMI and IR, and that the claimant received written notice of Dr. A's certification on or about January 18, 1999, in in letter from the Commission (EES-19) dated January 13, 1999. The claimant testified that he also received a letter from the carrier dated January 29, 1999, with two identical copies of a (Report of Medical Evaluation (TWCC-69), informing him of Dr. A's certification of MMI and IR. According to the claimant, the TWCC-69s had the signature of Dr. A, and a signature on the treating doctor's line with two boxes checked, "I AGREE with the above doctor's certification of [MMI]" and "I AGREE with the above doctor's assigned [IR]." It was the carrier's opinion that the signature on the treating doctor's line was that of Dr. H. The claimant testified that he did receive medical treatment from Dr. H.

The claimant testified that he disagreed with Dr. A's certification of MMI and IR; that he took one of the TWCC-69 forms and checked two boxes, "I DISAGREE with the above doctor's certification of [MMI]" and "I DISAGREE with the above doctor's assigned [IR]; and that he sent, via regular mail, the TWCC-69 to the Commission's Austin address indicated on the TWCC-69 on or about February 23, 1999. According to the claimant, he called the Commission's Austin office and San Antonio field office numerous times within 90 days of January 18, 1999, and disputed Dr. A's certification of MMI and IR. The claimant also said that he called the carrier to dispute Dr. A's certification of MMI and IR, but his phone calls were not returned. The claimant presented the testimony of his mother, Ms. M, to

corroborate his testimony. Ms. M testified that she saw the TWCC-69 that the claimant mailed to the Commission, that she drove the claimant to the post office to mail the TWCC-69, and that she heard the claimant's telephone conversations disputing Dr. A's certification of MMI and IR.

The Commission's Dispute Resolution Information System (DRIS) contact notes indicate no contacts were made or documents received between the date the EES-19 letter was mailed, January 13, 1999, and May 6, 1999, when an Employee's Request to Change Treating Doctors (TWCC-53) was received. An affidavit from the carrier's adjuster states that the carrier's claim notes from March 1998 through December 1999 contain no information regarding a dispute of Dr. A's certification of MMI and IR by the claimant or anyone on his behalf.

Pursuant to Rule 130.5(e), the version then in effect, the first certification of IR assigned to an employee becomes final if not disputed within 90 days after the doctor assigned it. The 90 days begins to run when the employee receives written notice of the certification. Texas Workers' Compensation Commission Appeal No. 960220, decided March 20, 1996. An employee's timely notice to the insurance carrier may be sufficient to dispute a first certification. Texas Workers' Compensation Commission Appeal No. 93200, decided April 14, 1993. Whether a first certification of MMI and IR was timely disputed is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 950533, decided May 22, 1995.

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. 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. 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.

The hearing officer determined that the preponderance of the evidence submitted did not show or otherwise establish that the claimant disputed either orally or in writing the determinations of the assessments of Dr. A between the dates of January 18, 1999, and April 17, 1999; and that the finding of MMI and the IR assigned by Dr. A on January 7, 1999, became final under Commission Rule 130.5(e). The hearing officer considered all of the evidence and did not find the claimant's and Ms. M's testimony persuasive. Contrary to the claimant's assertion, the hearing officer's Statement of Evidence does not state that the claimant's treating doctor disagreed with the MMI date and IR given by Dr. A. The Appeals Panel has stated that in certain cases a treating doctor may act as an agent of the claimant in raising a dispute pursuant to Rule 130.5(e), but such theory was not asserted by the claimant, and the evidence indicates that the claimant's treating doctor agreed with Dr. A's

certification of MMI and IR when he checked both “I agree” boxes on the TWCC-69. After reviewing the record, 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*.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Elaine M. Chaney
Appeals Judge