APPEAL NO. 000669

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 February 29, 2000. The issue at the CCH was whether the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. G on July 19, 1999, became final under Tex. W.C. Comm=n, 28 TEX. ADMIN. CODE ' 130.5(e) (Rule 130.5(e)). The hearing officer determined that the first certification of MMI and IR became final pursuant to Rule 130.5(e). The appellant (claimant) appeals, requesting that we reverse the hearing officer=s decision and render a decision in her favor. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

The claimant sustained a compensable injury to her neck and low back on _____. On July 19, 1999, the claimant was examined by Dr. G at the request of the self-insured. Dr. G certified that the claimant reached MMI on July 14, 1999, with a zero percent IR. On August 4, 1999, the claimant=s treating doctor, Dr. R, disagreed with Dr. G=s certification of MMI and IR. The claimant testified that she received an EES-19 letter from the Texas Workers= Compensation Commission (Commission) dated August 12, 1999, on August 17 or 18, 1999. The EES-19 letter states that Dr. G certified the claimant reached MMI on July 14, 1999, with a zero percent IR. According to the claimant, she first received knowledge of Dr. G=s report when she looked at her chart while at the doctor=s office and saw Dr. G=s Report of Medical Evaluation (TWCC-69), but she was unable to read it in its entirety. The claimant said that that same day she received a letter from the self-insured stating that her income benefits were being cut off, so she went to the Commission on November 9, 1999, and disputed Dr. G=s certification of MMI and IR. In evidence is a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated November 4, 1999, stating that income benefits had expired.

The self-insured asserts that the claimant was notified of Dr. G=s certification of MMI and IR when she received a Notification Regarding Maximum Medical Improvement and/or Impairment Rating (TWCC-28) dated August 3, 1999. The self-insured presented evidence that the TWCC-28 was sent to the claimant=s home address by certified mail, and was received on August 4, 1999. The claimant testified that the signature contained on the green card is not hers, and the only other people residing at her house on that date were her mother and her six-year-old grandson. According to the claimant, her mother does not remember signing the green card, but her mother has health problems which include Alzheimer=s, neuropathy, and Parkinson=s disease. The claimant has appealed the hearing officer=s finding that she received the TWCC-28 on August 4, 1999.

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.

In Texas Workers' Compensation Commission Appeal No. 94365, decided May 11, 1994, the claimant contended that she did not receive written notice of an IR at her mailing address on the day it was delivered there by certified mail because the receipt card bore the signature of her son and was not his signature but possibly that of her sister who resided with her and who had Alzheimer's disease. The Appeals Panel stated that despite the claimant's insistence that she did not actually receive the documents delivered to her home, it does not follow that this evidence of delivery is insufficient to constitute the notice required to start the running of the 90-day period provided by Rule 130.5(e) to dispute the first assigned IR. *See also* Texas Workers' Compensation Commission Appeal No. 960335, decided April 5, 1996, in which notice was provided where the mail receipt was signed for by the claimant's sister. Thus, the fact that the claimant=s mother may have signed for receipt of the written notice of Dr. G=s certification of MMI and IR, did not result in claimant's not receiving written notice on that date.

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. G's certification of MMI and IR assigned on July 19, 1999, is considered final under Rule 130.5(e).

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge