

APPEAL NO. 000670

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 16, 2000. The hearing officer determined that: (1) the _____, compensable injury of the appellant (claimant) does not extend to or include the claimant=s alleged depression or current low back condition; (2) claimant did not have disability; and (3) the first certification of maximum medical improvement and impairment rating (IR) (the first certification) has become final pursuant to Tex. W.C. Comm=n, 28 TEX. ADMIN. CODE ' 130.5(e) (Rule 130.5(e)). The claimant appeals these determinations on sufficiency grounds. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer=s determinations.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that the first certification became final. Claimant asserts that he never received written notice of the zero percent first certification. He contends that the mail was not delivered to his rural address.

Rule 130.5(e) provides that the first IR assigned to an injured worker will become final if not disputed within 90 days after it was assigned. The 90 days begins to run from the date the parties received written notice of the rating. Texas Workers' Compensation Commission Appeal No. 92693, decided February 8, 1993. 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.

In this case, the hearing officer reviewed the evidence about whether claimant received written notice of Dr. V first certification. The hearing officer determined that on November 20, 1997, the Texas Workers= Compensation Commission mailed written notice of the first certification to claimant and that claimant received it on or before November 25, 1997. The hearing officer determined that, because claimant did not dispute the first certification within 90 days, it became final. The hearing officer stated that claimant=s testimony that he never received written notice of the first certification was not credible. There was conflicting evidence regarding whether claimant received written notice of the first certification. However, the hearing officer heard the evidence, resolved the conflicts, and determined what facts were established. After reviewing the evidence, we conclude that the hearing officer=s determinations in this regard are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Claimant contends the hearing officer erred in determining that his compensable injury did not extend to or include his current low back condition. It was undisputed that claimant sustained a back injury at work on _____. Claimant testified that he had pain continuing from that time until May 1999. Claimant said that in May 1999, he sought medical attention when his back went out when he was preparing to dig in his garden. Medical records from May 1999 state that claimant was digging potatoes when his back pain began. Carrier asserted that claimant sustained a new injury and that his current back problems were not related to his prior injury. The record indicates that claimant received only minimal medical treatment for his compensable back injury and that by September 1997, he was much better and had been released to return to work. Claimant said he minimized the injury because he was hoping for a full-time job with his employer.

There is conflicting evidence as to whether the claimant's current back problems are a result of his compensable injury of _____. The hearing officer determined that claimant's current low back condition is not the result of the compensable injury. The claimant contends that the evidence shows that his current problems are a continuation of his compensable injury. However, the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer resolves conflicts in the evidence, including the medical evidence, and was entitled to believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. Whether a claimant sustained a new injury or merely suffered a continuation of an original injury is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 962272, decided December 18, 1996. We conclude the hearing officer's determinations in this regard are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. We have also reviewed the testimony and evidence regarding the scope of claimant's injury and the depression, and we conclude that those determinations are also not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

The hearing officer also determined that claimant's inability to obtain or retain employment at his preinjury wage is not due to his compensable injury. Again, whether claimant's current condition is due to the compensable injury and whether this caused disability was a factual question for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The claimant again bore the burden of proof on this issue. Under our standard of review, we are satisfied that the decision of the hearing officer has sufficient evidentiary support in the record.

Claimant complains that he was not given adequate time to present his case. However, near the conclusion of claimant's case, claimant was asked whether he had anything additional he wanted to present to the hearing officer. Claimant stated that he did not. We perceive no error.

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