APPEAL NO. 000848

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 March 30, 2000. With regard to the only issue before her, the hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. D did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (carrier) appealed, contending that the respondent's (claimant) contact with the Texas Workers' Compensation Commission's (Commission) field office was only to ask for an explanation of Dr. D's report, and not to dispute the MMI date and IR, as reflected in the Dispute Resolution Information System (DRIS) note. Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

It is undisputed that claimant had been employed as a receptionist and that on _____ she sustained a compensable injury to her left wrist "lifting a bunch of files." Claimant apparently had surgery on September 2, 1998. The parties stipulated that Dr. D was a carrier required medical examination (RME) doctor, that in a report dated June 1, 1999, Dr. D certified MMI on that date with an eight percent IR and that no other doctor has rendered an IR. By EES-19 letter dated July 7, 1999, the Commission notified claimant of Dr. D's report and sent her a copy of that report. Claimant agrees that she received the EES-19 letter and report on July 12, 1999. It is also undisputed that claimant came to the Commission's field office on July 13, 1999.

The crux of the issue is what was said when the claimant came to the Commission's office. Claimant testified that she told the Commission employee at the window that she had received the report, that she disagreed with it and that "it wasn't right." Claimant agrees that she did not use the word "dispute," that she did not know how the eight percent IR was calculated and that at that point she had not talked to her treating doctor, Dr. W. A DRIS note dated July 13, 1999, states:

Inquiry code: GRI General request for info

Text: OJH/Claimant here as walk-in. She advised she did not understand her ltr. Clmt has rcvd IR of 8% and MMI date of 06-01-99. Advised clmt what it meant and she stated how was she suppose to go back to work hurting as RME [Dr. D] released her. Advised clmt to get w/her TD [treating doctor] and discuss to see if he is in

> agreement and also to ck w/TRC [Texas Rehabilitation Commission] to seeing [sic] about being retrained. Advised clmt the dr could probably explain how IR was given as we are not medical professionals. Advised clmt she has 90 days to dispute. Advised she will get w/dr and then call me back.

Claimant testified that after she left the Commission's field office she went to Dr. W's office and left the EES-19 letter and Dr. D's report because Dr. W was too busy to see her that day. Claimant testified that she saw Dr. W about a month later and that Dr. W had indicated disagreement with Dr. D's MMI date but apparently had agreed with him on the IR. Claimant agrees that she did not call or return to the Commission's office until November 1999. Carrier apparently continued paying temporary income benefits (TIBs) until it believed the 90 days had run and that Dr. D's eight percent IR had become final and then converted the overpayment of TIBs to impairment income benefits (IIBs) and paid the remainder of the IIBs. When carrier began paying at a different rate in November, claimant again contacted the Commission and was told that Dr. D's eight percent IR had become final. Dr. W disagreed with Dr. D's MMI date on carrier's copy of the Report of Medical Evaluation (TWCC-69) (and agreed with the IR). However, those notations are not dated. The hearing officer questioned claimant very closely on the discrepancies between her testimony and the DRIS note and set out claimant's and carrier's arguments in the Statement of the Evidence. The hearing officer made the following disputed findings:

FINDINGS OF FACT

3. On July 13, 1999, Claimant appeared in person at the Commission's field office to have the EES19 and [Dr. D's] report explained and noted her disagreement with it.

4. Claimant's ninetieth day from the date of notice is October 10, 1999. [Not appealed or disputed.]

5. On July 13, 1999, Claimant timely disputed the assignment of an eight percent [IR] and certification of [MMI] of June 1, 1998 as assigned by [Dr. D].

Carrier argues that the DRIS note is more accurate and credible than claimant's testimony to the contrary; that since claimant "did not understand the medical significance of the rating or how it was calculated," claimant's testimony that she disagreed or disputed the IR "is simply not credible." We have many times held that Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d

701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer obviously found claimant's testimony more persuasive than carrier's interpretation of the DRIS note.

We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are 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, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Dorian E. Ramirez
Appeals Judge

Philip F. O'Neill
Appeals Judge