

APPEAL NO. 000853

On March 27, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The hearing officer resolved the disputed issue by deciding that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned to appellant (claimant) by Dr. G on April 15, 1999, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). Claimant requests that the hearing officer's decision be reversed and that a decision be rendered that the first certification of MMI and IR did not become final. Respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable injury on \_\_\_\_\_. In a Report of Medical Evaluation (TWCC-69) dated April 15, 1999, Dr. G certified that claimant reached MMI on April 15, 1999, with a five percent IR for impairment of claimant's left shoulder. The parties stipulated that Dr. G was the first doctor to certify that claimant was at MMI and to assign an IR. The parties also stipulated that on May 5, 1999, claimant received written notice of the IR assigned by Dr. G. Claimant testified that he called carrier's adjustor in May 1999 after receiving Dr. G's TWCC-69 and told the adjustor that he was having neck problems and that the adjustor told him that he did not need to dispute the IR for the shoulder and that he would get a separate IR for his neck. It was claimant's position that he disputed the five percent IR assigned by Dr. G when he called the adjustor several times in May 1999. The adjustor's notes reflect that in May 1999 claimant told her about having neck problems that claimant related to his compensable injury and that the adjustor indicated that the neck problems may be part of the compensable injury, but the adjustor's notes do not reflect that claimant told her that he was disputing the IR assigned by Dr. G or that the adjustor told claimant that he did not need to dispute the IR assigned by Dr. G. Claimant said that carrier accepted his cervical spine problems as part of the compensable injury. Claimant underwent cervical spine surgery for a herniated disc on December 23, 1999. A Texas Workers' Compensation Commission (Commission) dispute information resolution system note reflects that claimant called the Commission on December 27, 1999, about disputing the first IR.

The version of Rule 130.5(e) in effect during the relevant time period provided that "[t]he first [IR] assigned to an employee is considered final if the rating is not disputed within 90 days after the rating is assigned." In Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 248 (Tex. 1999), the court held that Rule 130.5(e) has no exceptions and that an IR is final if not disputed within 90 days. Claimant contends that the evidence shows that he conveyed his dispute to the adjustor in May 1999. The Appeals Panel has held that

a claimant may dispute the first IR by conveying notice of the dispute to the carrier, but emphasized that a claimant having a dispute about MMI or an IR should notify the Commission expeditiously so that the dispute resolution process can be initiated. Texas Workers' Compensation Commission Appeal No. 93200, decided April 14, 1993. Whether and when a claimant has disputed the first IR with the Commission or carrier are fact questions for the hearing officer to determine based on the evidence presented at the CCH.

The hearing officer stated in the Statement of the Evidence portion of her decision that the preponderance of the credible evidence is that claimant did not dispute the first IR assigned to him until December 27, 1999. The hearing officer found that claimant first disputed the first IR assigned to him on December 27, 1999, when he contacted the Commission, and that he did not dispute the first IR assigned to him within 90 days. The hearing officer concluded that the first certification of MMI and IR assigned to claimant by Dr. G on April 15, 1999, became final under Rule 130.5(e). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts  
Appeals Judge

CONCUR:

Philip F. O'Neill  
Appeals Judge

Gary L. Kilgore  
Appeals Judge