APPEAL NO. 000969

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 April 17, 2000. The hearing officer determined that the respondent (claimant) timely disputed Dr. P's certification of maximum medical improvement (MMI) and impairment rating (IR) and that the first certification of MMI and IR assigned by Dr. P did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (carrier) appeals on evidentiary sufficiency grounds asserting, in essence, that there is no evidence corroborating claimant's testimony that she told a Texas Workers' Compensation Commission (Commission) employee on October 7, 1999, that she disputed Dr. P's IR and thus that the hearing officer's reliance on claimant's testimony to establish her dispute is unwarranted. The file does not contain a response from claimant.

DECISION

Affirmed.

The parties stipulated that Dr. P certified that claimant reached MMI on July 9, 1999, with a zero percent IR, and that Dr. P was the first doctor to have done so. The hearing officer's finding that claimant received Dr. P's certification of MMI and IR on July 27, 1999, is not appealed. In addition to the dispositive legal conclusion, the carrier disputes findings that claimant disputed the certification of MMI and IR on October 7, 1999, and thus disputed such certification within 90 days after receiving it.

The hearing officer's Decision and Order contains a detailed summary of the evidence and we will, accordingly, set out only so much of the evidence as is necessary to support our decision concerning the appealed findings, noting that much of the evidence dealt with establishing the date that claimant received written notice of Dr. P's IR of zero percent.

Claimant testified that on October 7, 1999, she had a telephone conversation with (Ms. R), the adjuster on her claim, about changing treating doctors from Dr. P to another doctor; that during the course of this conversation Ms. R told her about Dr. P's MMI date and IR certification and advised her that she had to go to the Commission both to dispute Dr. P's IR and to complete and file the Employee's Request to Change Treating Doctors (TWCC-53). Claimant further testified that on that same day, October 7th, she went to the Commission's field office and told the employee at the window that the adjuster told her to go to the Commission to dispute Dr. P's IR and to change to another doctor and that she accomplished both actions at the same time.

A Dispute Resolution Information System (DRIS) note of October 7, 1999, reflects that a TWCC-53 was received, apparently on that date. A DRIS note of November 8, 1999, states, in part, that claimant said she came to the office and filed a request to change doctors and thought that was the same as filing a dispute.

The affidavit of Ms. R states, among other things, that during a telephone call on September 21, 1999, claimant recalled receiving certified mail containing a Report of Medical Evaluation (TWCC-69) and a Notification Regarding Maximum Medical Improvement and/or Impairment Rating (TWCC-28) but thought she had thrown it out. Ms. R further stated that in a conversation with claimant on October 29, 1999, she advised claimant that a letter was sent to claimant advising that she had been determined to have reached MMI, that she had a certain time "to dispute her MMI," and that a TWCC-53 was also enclosed with this letter. This letter, incidentally, does not state the IR. Ms. R's affidavit makes no mention of a conversation with claimant on October 7, 1999.

In his Statement of the Evidence, the hearing officer states that although he finds claimant's recollection of certain events inaccurate, he "found that her testimony was credible, and [he] believed her when she testified that she notified the Commission's receptionist that she wanted to dispute the assessments of [Dr. P]." The hearing officer further states that "[a]fter considering all of the evidence and testimony [he] conclude[d] that the [IR] of [Dr. P] was received on July 27, 1999, and disputed on October 7, 1999."

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies 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 Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge