APPEAL NO. 000986

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 13, 2000. The hearing officer determined that the appellant's (claimant) compensable injury does not extend to the cervical and thoracic spine and that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. K on September 9, 1998, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The claimant appeals, expressing her disagreement with these determinations. The appeals file contains no response from the respondent (carrier).

DECISION

Affirmed.

The claimant had a slip-and-fall accident on _____. The parties stipulated that the compensable injury included the low back, ribs, and right shoulder. The claimant also contends that the injury extended to the cervical and thoracic spine. She testified that her neck started hurting about two months later and her thoracic spine, or mid-back, started hurting about two weeks after the fall. Her undated written report of injury to her employer contains a diagram reflecting pain in the left rib area and pain in the right mid-back. The medical report of treatment on the date of the injury diagnosed a left rib contusion with aggravation of a preexisting left rib contusion. No mention is made of the thoracic or cervical spine or the right shoulder. Later medical reports also mention only the ribs with the possible exception of a report of August 10, 1998, which described "tenderness over the intercostal muscles on the left at about T6-T7."

The hearing officer considered this evidence and found that the claimant did not meet her burden of proving that her injury extended to the disputed areas of the body. In her appeal, the claimant argues that her testimony, as well as the medical evidence, clearly established a causal relationship between the fall and a thoracic and cervical spine injury. Leaving aside the question of whether she established an injury to these areas of the spine, we observe that the issue of extent of injury presented a question of fact for the hearing officer to decide. Even though the claimant's testimony and pain drawing could be interpreted as supporting her position, the hearing officer was not as a matter of law to accept this testimony as true and we note that different inferences could be drawn from it. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. 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 find the evidence sufficient and affirm the extent-of-injury determination of the hearing officer.

Rule 130.5(e), the version then in effect, provided 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." If the IR becomes final by virtue of this rule, so does the underlying date of MMI on which the IR is calculated. Texas Workers' Compensation Commission Appeal No. 92670, decided February 1, 1993. There are no exceptions to this rule. Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 248 (Tex. 1999). But see the new Rule 130.5(e) effective March 13, 2000. The 90 days begins to run on the day written notice is received by the party challenging the certification. *See also* Texas Workers' Compensation Commission Appeal No. 94354, decided May 10, 1994. There was no dispute that the date of MMI of September 8, 1998, and two percent IR certification of Dr. K, apparently the treating doctor, contained in a Report of Medical Evaluation (TWCC-69) signed on September 9, 1998, was the first certification for purposes of Rule 130.5(e). The claimant testified that by the end of September 1998, she received written notice of this information sent to her, presumably, by the Texas Workers' Compensation Commission (Commission) in the regular mail. In evidence was a Commission letter to this effect dated September 18, 1998. The claimant, however, denied receiving a copy of the same information sent by the carrier even though in evidence was the green card bearing the signature, purportedly, of the claimant. The green card was returned to the carrier on October 2, 1998. The hearing officer found that the claimant received written notice of the certification on or about September 27, 1998. Finding of Fact No. 4. The claimant said she immediately called Ms. L, the adjuster. The claimant's testimony is unclear on the exact substance of the conversation, but she said she was told by Ms. L that the rating was for the fall only and the rib injury was still pending. Little effort was made to clarify what she said. Ms. L apparently no longer worked for the carrier and did not testify. Ms. G, the current adjuster, did testify that she reviewed the telephone logs in the claimant's file and there was no entry for a telephone call between the beginning of September and the end of December 1998. The hearing officer did not find the claimant credible in her assertion that she timely disputed the certification of MMI and IR and found that the certification became final pursuant to Rule 130.5(e).

In her appeal, the claimant argues that the first certification did not become final because the claimant "was misinformed or not explained throughly what the 2% impairment was for." As noted above, it was unclear from the claimant's testimony what she told Ms. L. In any case, the hearing officer was not compelled as a matter of law to accept the claimant's version of the conversation or that whatever transpired during this conversation amounted to a dispute of the certification. In addition, ignorance of the law does not excuse noncompliance with it. Whether and, if so, when a first certification of MMI and IR is disputed presents a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 971443, decided September 5, 1997. Under our standard of review, we find the evidence sufficient to support the hearing officer's finding that the first certification was not disputed in the 90 days provided for a dispute.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge