APPEAL NO. 001020

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 21, 2000. The appellant (claimant) and the respondent (self-insured) stipulated that The claimant sustained a compensable injury on _____, and that the initial determination of The claimant's impairment rating (IR) was made by Dr. DS on July 5, 1999. The hearing officer determined that The claimant received notice of Dr. DS's certification on July 13, 1999; that The claimant did not dispute the certification of Dr. DS on or prior to October 12, 1999; that the first certification of Dr. DS became final under the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)); and that The claimant reached maximum medical improvement (MMI) on June 30, 1999, with a zero percent IR as certified by Dr. DS. The claimant appealed, contended that the evidence established that he disputed the certification of Dr. DS on July 19, 1999, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the first certification of MMI and IR by Dr. DS did not become final. A response from the self-insured has not been received.

DECISION

We affirm.

The claimant did not dispute that he received the first certification of MMI and IR in July 1999. He testified that on July 19, 1999, he went to a notary public; had a statement disputing the first certification of Dr. DS signed by the notary; with his wife, hand-delivered a copy of the statement to the personnel office of the self-insured; mailed a copy to Mr. SS, an adjuster for the third party administrator (TPA) handling the claim for the self-insured; and mailed a copy to the Texas Workers' Compensation Commission (Commission) in Austin. A written statement dated March 30, 2000, and signed by The claimant's wife is consistent with his testimony concerning the dispute of the first certification.

A typed letter to the Commission dated July 19, 1999, and signed by The claimant states that he does not agree with the report of Dr. DS. After The claimant's signature appears:

SIGNED under oath before me on July 19, 1999.

[A signature]
NOTARY PUBLIC, STATE OF TEXAS

I, the notary public whose signature appears above, certify that I am not an attorney in this case.

[A signature]

The document does not contain a notary seal. A handwritten note dated March 30, 2000, states "[o]n July 19, 1999 [The claimant] came to me to notarize papers regarding a pending suit. I notarized under no duress & of my own free will."

Ms. N testified that she is an adjuster for the TPA; that Mr. SS no longer works for the TPA; that she reviewed the file of the claimant and did not find any indication that prior to November 1999 he had notified the TPA that he disputed the first certification of Dr. DS; that she spoke with Ms. B who works for the self-insured; and that Ms. B advised her that the self-insured did not have a record of The claimant having disputed the first certification prior to March 2000. Personnel records of the self-insured related to the claimant do not indicate that he disputed the first certification of Dr. DS.

The hearing officer stated that he took official notice of Commission dispute resolution information system (DRIS) entries. A copy of the DRIS entries is not attached to the record as the Appeals Panel previously indicated they should be for its review. In his Decision and Order, the hearing officer stated that the DRIS notes do not indicate that the Commission's central office received a dispute of the report of Dr. DS. Under the circumstances of this case, we do not reverse the decision of the hearing officer and remand for the DRIS notes to be included in the record. In rendering this decision, we consider only the record and do not consider the hearing officer's comments about Commission records.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). While a claimant's testimony alone may be sufficient to prove a factual matter, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The record is sufficient to support the determinations of the hearing officer and they are not 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); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Section Manager