

APPEAL NO. 001196

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 May 3, 2000. The hearing officer determined that the first certification of maximum medical improvement and the zero percent impairment rating (IR) certified by Dr. W (the first certification) did not become final because Dr. W rescinded the first certification within the 90-day period. Appellant (carrier) appeals contending that the first certification became final and that the alleged rescission did not take place on March 5, 1999, as asserted by respondent (claimant). Claimant responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that the first certification did not become final. Carrier asserts the hearing officer should not have believed evidence that claimant disputed the first certification and that Dr. W rescinded it, because the evidence was not credible.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)) provides that the first IR assigned to an injured worker will become final if not disputed within 90 days. The 90-day period starts to run from the date that written notice is received. Texas Workers' Compensation Commission Appeal No. 92693, decided February 8, 1993. The Appeals Panel has frequently held that a doctor may rescind a first certification if it is rescinded within 90 days of when it was assigned. Texas Workers' Compensation Commission Appeal No. 990056, decided February 24, 1999; Texas Workers' Compensation Commission Appeal No. 970021, decided February 20, 1997; Texas Workers' Compensation Commission Appeal No. 000065, decided February 24, 2000.

Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

In her findings of fact and conclusion of law, the hearing officer determined that: (1) Dr. W's first certification was dated February 5, 1999; (2) Dr. W rescinded the first certification on March 5, 1999; and (3) the first certification did not become final. Claimant testified that when she first called the adjuster, Ms. P, in the "second week of March," Ms. P said that carrier had already received the March 5, 1999, rescission letter from Dr. W. The March 5, 1999, rescission letter is in the record. Claimant said Ms. P told her that she need not dispute because Dr. W had already rescinded the first certification. Ms. P's

adjuster notes do not reflect this conversation and, in a memo, Ms. P stated that she would have “entered any conversation in the notes.” This conflicting evidence presented a fact issue for the hearing officer, which she resolved. We have reviewed the record and the hearing officer’s determinations and we conclude that they are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain, supra.*

We note that, in the discussion portion of the decision and order, the hearing officer also stated that claimant had timely disputed the first certification when she called the adjuster. The hearing officer erroneously stated that the call to the adjuster took place in February, although claimant testified several times that it took place the second week in March. Claimant said she was unaware of the exact date of the call. In any case, we have already affirmed the determination that the first certification did not become final due to rescission. Therefore, we need not address the hearing officer’s alternative reason she discussed regarding why the first certification did not become final.

We affirm the hearing officer’s decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Kathleen Decker
Appeals Judge