APPEAL NO. 001247

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 11, 2000. The hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. G did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)); and that the respondent (claimant) is entitled to be evaluated by a designated doctor.

The appellant (self-insured) appeals, questioning the credibility of the evidence submitted to support the contention that the claimant's treating doctor disputed the first IR. The self-insured argues that there is no credible evidence of a timely filing of a dispute. The claimant responds that the evidence supports the hearing officer's findings and that the decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

Testimony was brief. The claimant injured his back on March 24, 1998. He was under active treatment through pain relief injections following the assessment of IR that was in issue here. That assessment came about after the claimant was examined by a doctor for the carrier, Dr. G, who certified that the claimant had reached MMI on May 1, 1999, with a seven percent IR. The Report of Medical Evaluation (TWCC-69) prepared by Dr. G was dated May 24, 1999.

The cover letter of the Texas Workers' Compensation Commission (Commission) forwarding the first IR to the claimant is dated June 22, 1999. The claimant said that he received the first IR sometime in late June 1999. (The copy of the TWCC-69 in evidence is date-stamped by the self-insured on June 17, 1999.) The claimant said that he talked it over with his treating doctor, Dr. L, who disagreed and said that she would take care of it for him.

On July 1, 1999, Dr. L completed the bottom of the TWCC-69 indicating her disagreement with the MMI and IR. The claimant said that until his impairment income benefits (IIBs) check stopped, he did not realize that the matter had not been taken care of. He called the adjuster and was informed he had had 90 days to dispute the IR and this time was up. The TWCC-69 in evidence is date-stamped by the Commission on October 21, 1999.

A Dispute Resolution Information System (DRIS) note dated September 27, 1999, noted that the claimant called and asked if the Commission had received a dispute from Dr. L. When told there was nothing from the doctor, the claimant asked if he could then dispute and was told that 90 days had passed. The claimant told the Commission employee who made the note that he had received the first IR on June 25, 1999, and

therefore the 90 days was up. The claimant called again several times on September 27th and said that he had asked his treating doctor to dispute. He was informed that only the claimant and the carrier could dispute the IR and that the treating doctor's indication of disagreement on the TWCC-69 did not operate as a dispute. Later notes state that the claimant called to report his doctor did not have proof either of mailing or "faxing" the TWCC-69 to the Commission.

On November 30, 1999, Dr. L wrote that she disputed the TWCC-69 of Dr. G on the claimant's behalf and with his agreement and that she sent the TWCC-69 with the bottom portion completed back to the Commission on July 1, 1999, by facsimile transmission and regular mail. An affidavit to a similar effect was signed by Dr. L on April 11, 2000.

A Notice of Maximum Medical Improvement/Impairment Rating Dispute (TWCC-32) was mailed and "faxed" to the Commission by the claimant on September 27, 1999. He said that he did not sign the TWCC-32 (although his name was on the bottom) and that it was not his wife's signature, but he could not rule out that it was his son's. This form stated that the notice of the first IR was received on June 27.

While there is no date-stamped copy of the TWCC-69 in evidence that falls within the 90-day period, the claimant's attorney argued that the mail processing problems of this field office were well known, and he indicated that in the past documents on other cases had been misfiled or lost.

The Appeals Panel has agreed that a treating doctor may dispute a first IR on behalf of a claimant if he is involved in the decision, Texas Workers' Compensation Commission Appeal No. 961569, decided September 23, 1996; the claimant may also ratify a doctor's actions in disputing the first IR. *See* Texas Workers' Compensation Commission Appeal No. 991946, decided October 15, 1999 (Unpublished). The completion of the TWCC-69 "agreement/ disagreement" section pursuant to Rule 130.3(b) and (c) may be found to constitute a dispute of the first IR. Texas Workers' Compensation Commission Appeal No. 990790, decided May 19, 1999.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The credibility of Dr. L's assertion that the dispute was filed was weighed against the absence of a date-stamped copy of the

TWCC-69 and evidently the hearing officer found the statement of timely filing to be more credible. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We accordingly affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Dorian E. Ramirez
Appeals Judge