APPEAL NO. 001623

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 June 22, 2000. The hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. B on November 11, 1998, did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (carrier) appealed on sufficiency grounds, specifically contending that there was no evidence in the record to suggest that written notice was not sent to the respondent's (claimant) proper address on December 11, 1998. The appeals file does not contain a response from the claimant.

DECISION

Affirmed.

The CCH was extremely brief. The claimant testified that she injured her left ankle, left wrist, and left hip on _____. The parties stipulated that the claimant sustained a compensable injury on _____, and that on November 11, 1998, Dr. B certified the claimant to have reached MMI on November 11, 1998. Dr. B assigned the claimant a zero percent IR and was the first doctor to certify MMI and assign an IR. The claimant was asked whether she received notice that Dr. B had issued a Report of Medical Evaluation (TWCC-69) indicating an MMI date of November 11, 1998, and IR and she responded with a "no." The claimant stated that she did not receive notice that Dr. B had issued a TWCC-69 until she went to her attorney's office on February 18, 2000, and she spoke to her attorney's assistant. She stated, "[t]hat's the way I found out." The claimant denied that she ever saw Dr. B and testified that she disputed the MMI date and IR on March 20, 2000, but did not testify where the dispute was filed or lodged. The claimant stated she received a letter from the Texas Workers' Compensation Commission (Commission) a couple of days later which indicated that Dr. B had given her a zero percent IR and an MMI date. The Commission's letter to the claimant was not admitted but was provided by the claimant to the hearing officer with her exhibits.

On cross-examination, the claimant admitted that her address since the date of injury had been (address) and that her husband was Mr. G. No further questioning took place regarding receipt of notice of Dr. B's MMI date and IR.

The claimant offered an Initial Medical Report (TWCC-61) dated November 9, 1998, from Dr. B which reflected that the claimant was examined by him on _____, for complaints of left ankle, hand, left-sided back pain, and soreness in her left knee. Dr. B took the history of the claimant's injury and he entered his clinical findings on the report. The claimant also offered additional progress notes from Dr. B and a physician's assistant along with a TENs unit prescription and documents from various other physicians.

The carrier offered an affidavit from Ms. L, the case manager for the claim, who attached a letter from the carrier to the claimant dated December 11, 1998. Ms. L stated in the affidavit that the letter was sent via certified mail on the date listed and had been signed by Mr. G on the date marked by the U.S. Postal Service. However, there was no text to the letter or any indication of attachments or enclosures. The exhibit had stapled to the letter and affidavit an undated Notification Regarding Maximum Medical Improvement and/or Impairment Rating (TWCC-28) from the carrier giving notice that Dr. B found the claimant had reached MMI with an IR of zero percent; Dr. B's TWCC-69 dated November 11, 1998; and a copy of a return receipt card signed by the claimant's husband, Mr. G, on December 23, 1998. Next to the return address for the carrier was the handwritten date of _____, the carrier's claim number and someone's initials. This return receipt was sent back to the carrier on December 23, 1998.

Rule 130.5(e) became effective on January 25, 1991, and was not amended until March 13, 2000. Prior to March 13, 2000, Rule 130.5(e) 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. The hearing officer based her finding that the claimant did not receive written notice of Dr. B's MMI date and IR until on or about February 18, 2000, on the fact that the carrier's letter sent to the claimant on or about December 11, 1998, did not contain any text or any indication on the face of the letter that an enclosure or attachment was mailed with the letter. Had some indication been found on the letter within the text or as an enclosure notation, it would have provided some proof that the documents attached to the letter admitted at the CCH actually were sent with the letter received by Mr. G on December 23, 1998. If the letter and attachments had been received by the claimant on December 23, 1998, as urged by the carrier, the claimant's dispute was filed within 90 days after receiving notice of Dr. B's MMI date and IR.

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). The trier of fact may believe all, part, or none of any witness's 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.

In a case such as the one before us where both parties presented evidence on the disputed issue, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder and 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 could 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).

Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 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 hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge