

APPEAL NO. 001708

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 June 6, 2000. The hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. P on November 23, 1998, did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)), because it was disputed by the respondent's (claimant) treating doctor acting on behalf of the claimant.

The appellant (carrier) appealed, arguing that there was no evidence that, at the time he filed his disagreement with the first IR on a Report of Medical Evaluation (TWCC-69), the treating doctor was acting on behalf of the claimant in disputing that IR. The claimant responded that the decision was correct, and that the Appeals Panel decisions cited by the carrier have been superceded by later decisions that support the decision.

DECISION

We affirm the decision that there was a timely dispute based upon the record.

The claimant, whose testimony was translated, did not go into the aspects of his injury. The record was not favored with a stipulation as to the extent of the injury, either, although the hearing officer requested one at the close of the presentation of the evidence. Some medical records indicate that the claimant contended injury to his entire spine as well as his knee, although most treatment appears to have centered on his knee. The claimant agreed that his treating doctor, Dr. M, D.C., had referred him to Dr. P, an orthopedic surgeon, for further evaluation of his knee. Dr. P ordered an MRI and determined it was negative for internal derangement of the knee. Dr. P certified that the claimant had a zero percent IR for his right knee and had reached MMI on November 23, 1998. Although there are no findings as to when the claimant received this IR, he stated that he brought it to Dr. M's office as soon as he received it in the mail because he knew it was something bad. A letter from Dr. M as well as the claimant's testimony indicated that this discussion occurred on December 29, 1998. Dr. M's treatment notes do not reflect a discussion with the claimant at his visit on December 29, 1998.

There is only one copy of the TWCC-69 in evidence, and it has obviously been "faxed" back and forth several times. There is a date stamp of the Texas Workers' Compensation Commission on this form that indicates it was filed at some point on December 17, 1998. The bottom portion of the form was filled out by Dr. M and indicated disagreement with Dr. P's IR. The date of his signature is somewhat ambiguous; plainly, both "11" and "12" were written in as the month of the signature. Thus, the date can be read as "11-29-98" or "12-29-98."

Dr. M subsequently certified a 16% IR with MMI on November 15, 1999. This IR included the claimant's spine as well as his knee.

We note that November 29, 1998, was the Sunday after Thanksgiving. Further, neither the carrier nor the claimant argued that Dr. M had filed his disagreement with Dr. P's IR on a date *prior to* December 29, 1998. The argument made by both parties was whether Dr. M filed on behalf of the claimant.

We would note to start that the clarity of the decision is not enhanced by the hearing officer's findings of fact which appear to follow an "out of sequence" path of events. The hearing officer found that the claimant and Dr. M discussed the disagreement and that pursuant to this discussion Dr. M filed his TWCC-69 disagreement a month earlier. Furthermore, no findings are made as to the date that the claimant received the first IR. However, the record supplies facts which support the conclusion that Dr. M disputed on behalf of the claimant on December 29, 1998, and that this was within 90 days of the date that the claimant received the IR. We will uphold the hearing officer's judgment if it can be sustained on any reasonable basis supported by the evidence. Daylin, Inc. v. Juarez, 766 S.W.2d 347, 352 (Tex. App.-El Paso 1989, writ denied); Texas Workers' Compensation Commission Appeal No. 950791, decided July 3, 1995.

The Appeals Panel has held that a treating doctor may dispute the first IR on behalf of the claimant so long as there is evidence of involvement by the claimant in that decision. Texas Workers' Compensation Commission Appeal No. 992227, decided November 22, 1999; Texas Workers' Compensation Commission Appeal No. 992228, decided November 22, 1999. These decisions reconciled what may have been previously conflicting authority on this subject. The hearing officer could choose, as finder of fact, to credit the testimony of the claimant and Dr. M's letter which described how the TWCC-69 came to be filed. 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).

We note that although the hearing officer appears to have found that an action was taken by Dr. M a month earlier pursuant to directions given a month later by the claimant, authorization of the doctor in filing a dispute for a claimant may be found to exist by way of ratification. See Texas Workers' Compensation Commission Appeal No. 992179, decided November 15, 1999.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here, and affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

CONCUR IN THE RESULT:

Tommy W. Lueders
Appeals Judge