APPEAL NO. 001951

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 27, 2000. The hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) by Dr. P that the appellant (claimant) reached MMI on May 18, 1999, with a seven percent IR became final because neither party disputed it within 90 days of having received it. The claimant appealed, contended that she disputed it within 90 days of having received it, 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 did not become final under the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The respondent (carrier) replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The hearing officer determined that the claimant received a copy of the first certification of MMI and IR by Dr. P on or before July 8, 1999, and that she did not dispute the first certification until November 4, 1999, when she called the Texas Workers' Compensation Commission (Commission) field office handling the claim. The claimant testified that she was treated by Dr. T, a chiropractor, for a low back injury; that Dr. T sent her to Dr. P, a chiropractor, for an IR; that she received the report on or about July 7 or 8, 1999; that Dr. T continued to treat her; that she started going down hill; that Dr. T referred her to Dr. R, a neurosurgeon, around the end of the summer; that in September or October 1999 she called and spoke with someone at the Commission to dispute the report of Dr. P; that the person she spoke with was not very helpful; that she called the Commission again in late October or early November 1999; that she was advised that the Commission did not have a record of her first call about the report of Dr. P; that she had surgery on June 20, 2000; and that on June 15, 2000, Dr. P rescinded his first certification of MMI and IR. Dr. P did not rescind his first certification within 90 days of the claimant's having received it. Texas Workers' Compensation Commission Appeal No. 950359, decided April 24, 1995.

Commission Dispute Resolution Information System notes do not indicate that the claimant contacted the Commission in September or October 1999, but do indicate that the claimant contacted the Commission on November 4, 1999. The entry for that day states that the claimant called, that she stated that she talked to someone in the office about disputing the IR, and that the claimant was told that nothing in the computer records showed that anything was disputed and that her 90 days for disputing the report had passed.

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 because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the evidence. 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. The hearing officer did not find the claimant's testimony about a call to the Commission in September or October 1999 to dispute the first certification of MMI and IR to be persuasive. 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). Only were we to conclude, which we do not in this case, that the hearing officer's determinations that the claimant did not dispute the first certification of MMI and IR within 90 days of having received it and that the first certification became final under the provisions of Rule 130.5(e) are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb those determinations. 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 the order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge