

APPEAL NO. 001955

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 July 25, 2000. With respect to the single issue before her, the hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. A became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). In his appeal, the appellant (claimant) essentially argues that the hearing officer's determination that he received written notice of Dr. A's certification on July 19, 1999, is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

Because of the limited nature of the issue before us on appeal, our factual recitation will be limited to those facts most germane to that issue. The parties stipulated that the claimant sustained a compensable back injury on _____. In a Report of Medical Evaluation (TWCC-69) dated June 23, 1999, Dr. A, the claimant's treating doctor at that time, certified that the claimant reached MMI on June 21, 1999, with an IR of 10%, which is comprised of seven percent for a specific disorder of the lumbar spine, one percent for loss of lumbar range of motion (ROM), and two percent for loss of thoracic ROM. Dr. A's diagnostic impression in the narrative report accompanying his TWCC-69 is lumbosacral sprain and thoracolumbar sprain.

The carrier introduced a copy of the Notification Regarding [MMI] and/or [IR] (TWCC-28) it sent by certified mail to the claimant on July 1, 1999, and a copy of the return receipt card, which indicates delivery on July 19, 1999. The return receipt card includes a signature which purports to be that of the claimant. The claimant denies having signed the return receipt card, insisting that he was at work on July 19, 1999, and thus, was not home to sign for the certified mail. The carrier also introduced a copy of an Employee's Request to Change Treating Doctors (TWCC-53), which the claimant acknowledges that he signed. As the hearing officer noted, a comparison of the signatures on the return receipt card and the TWCC-53 demonstrates that the signature on the return receipt card is the signature of the claimant. The claimant also argues that he did not receive notice of first certification of MMI and IR because he had moved away from the address to which the TWCC-28 was sent on June 1, 1999. However, the claimant acknowledged that he received his benefit checks during this period which were also sent to that address and that he did not advise the carrier or the Texas Workers' Compensation Commission (Commission) of his change of address at that time. The Commission's Dispute Resolution Information System-Contact Data records reflect that the claimant did not dispute Dr. A's certification of MMI and IR until April 19, 2000.

Rule 130.5(e) provides that the first IR will become final if it is not disputed within 90 days after it was assigned. The 90-day period begins to run on the date the parties received written notice of the rating. Texas Workers' Compensation Commission Appeal No. 92693, decided February 8, 1993. The question of when the claimant received his first written notice of Dr. A's certification of MMI and IR is a question of fact for the hearing officer. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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 overwhelming weight of the evidence as to be clearly wrong and unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In this instance, the hearing officer determined that the claimant received written notice of Dr. A's certification of MMI and IR on July 19, 1999, the date of receipt reflected on the return receipt card that accompanied the TWCC-28, which the carrier sent to the claimant. The claimant argued that the signature on the return receipt card is not his signature and that he no longer lived at the address where the carrier mailed the TWCC-28 on July 19, 1999. However, the hearing officer determined that the signature on the return receipt card and the one on the TWCC-53, which the claimant acknowledged was his signature, were the same signature. In addition, the hearing officer noted that the claimant admitted that he received his income benefit checks in that period that were sent to the same address and that he did not advise the carrier of his change of address; thus, the carrier complied with Rule 102.4(a) by sending the correspondence to the claimant at his last known address. The hearing officer was acting within her province as the fact finder in deciding that the claimant received written notice of Dr. A's certification of MMI and IR on July 19, 1999. That determination is supported by sufficient evidence and our review of the record does not reveal that the hearing officer's determination in that regard is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for reversing the hearing officer's determination that the claimant received written notice of Dr. A's certification on July 19, 1999. Given our affirmance of that determination, we likewise affirm the hearing officer's determinations that the claimant did not timely dispute the first certification of MMI and IR because he did not do so until April 19, 2000, well beyond the October 18, 1999, expiration date of the 90-day period and that, in accordance with Dr. A's certification, the claimant reached MMI on June 21, 1999, with a 10% IR.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Susan M. Kelley
Appeals Judge