APPEAL NO. 002226

On June 15 and August 30, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. The hearing officer resolved the disputed issue by deciding that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. N on November 11, 1999, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (claimant) requests that the hearing officer's decision be reversed and that a decision be rendered in her favor. The respondent (self-insured) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable injury on _____. The claimant said that on that day boxes fell on her, knocking her to the floor, and that she injured her head, neck, and right shoulder. The claimant had right shoulder surgery in May 1999. The claimant was examined by Dr. N at the self-insured's request on November 4, 1999, and Dr. N certified in a Report of Medical Evaluation (TWCC-69) dated November 11, 1999, that the claimant reached MMI on November 4, 1999, with a four percent IR. Dr. N's TWCC-69 reflects that he mailed a copy of the TWCC-69 to the claimant at the claimant's correct address. The parties stipulated that Dr. N was the first doctor to certify MMI and IR. The claimant said that she never received a copy of the TWCC-69 from Dr. N.

In a Notification Regarding [MMI] and/or [IR] (TWCC-28) dated November 18, 1999, which is addressed to the claimant at the claimant's correct address and which indicates that it was mailed by certified mail, the self-insured wrote that Dr. N certified that the claimant reached MMI with a four percent IR and that a copy of Dr. N's report was attached to the TWCC-28. The TWCC-28 advised that, if the claimant did not agree with the MMI date or IR, she had 90 days to dispute those determinations. The claimant testified, and the claimant's 19-year-old daughter wrote in a written statement, that the return receipt in evidence showing a delivery date of November 20, 1999, contains the claimant's daughter's signature. The claimant's daughter stated that she had moved out of her family's house on October 31, 1999; that she recognizes her signature on the "certified letter," but that she does not remember signing for anything. The claimant said that her daughter never gave her the TWCC-28.

In an EES-19 letter dated November 19, 1999, the Texas Workers' Compensation Commission (Commission) noted that Dr. N had certified that the claimant reached MMI on November 4, 1999, with a four percent IR and that a copy of the EES-19 letter was sent to the claimant. A Commission Dispute Resolution Information System (DRIS) entry dated November 19, 1999, states that the EES-19 letter was mailed that day. The claimant said that she never received the EES-19 letter.

In answers to interrogatories, the claimant stated that she first learned of Dr. N's findings of MMI and IR when she received her last check on February 17, 2000, and that she called the Commission on that day and disputed Dr. N's findings. The claimant testified that in February 2000 she received a form from the self-insured notifying her that she would not receive anymore checks, that she then called the Commission, and that everything was explained to her at that time. There is no DRIS entry for the claimant for February 17, 2000. The first DRIS entry that mentions that the claimant called the Commission about her MMI date and IR is dated March 23, 2000, and at that time disputed issue codes for MMI and IR were noted.

Prior to amendment on 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 found that the claimant received notice of Dr. N's certification of MMI and IR on November 20, 1999, and that the claimant did not dispute Dr. N's findings until March 23, 2000, which was more than 90 days after she received notice. The hearing officer concluded that the first certification of MMI and IR assigned by Dr. N on November 11, 1999, became final under Rule 130.5(e). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence. Apparently, the hearing officer was not persuaded by the claimant's testimony that the claimant failed to receive any of the notices of MMI and IR that were sent to her in November 1999. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge