APPEAL NO. 002260

Following a contested case hearing held on August 9, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the first certification of maximum medical improvement (MMI) and impairment rating (IR) by Dr. H on December 31, 1999, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (claimant) files a request for review, arguing that she did dispute Dr. H's IR within 90 days of receiving it. The claimant also argues that Dr. H's certification did not properly apply the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). The respondent (carrier) replies that sufficient evidence, particularly the notes of the handling adjuster, supported the hearing officer's factual finding that the claimant did not dispute Dr. H's certification within 90 days. The carrier also argues that the claimant did not present evidence showing Dr. H failed to properly apply the AMA Guides.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The parties stipulated that the claimant sustained a compensable injury to her right knee in the form of a meniscus tear on November 4, 1999. The parties also stipulated that Dr. H, the claimant's treating doctor at the time, certified that the claimant was at MMI on December 30, 1999, with a zero percent IR. Records of the Texas Workers' Compensation Commission (Commission) show that the claimant was sent written notice of Dr. H's certification on January 18, 2000. The claimant testified that she informed the adjuster handling her claim that she disputed Dr. H's certification on March 24, 2000. The claimant also testified that she timely disputed her certification with the Commission as she was advised to do by the adjuster. The adjuster's notes indicate that she discussed changing treating doctors with the claimant on March 24, 2000, and Commission records indicate that the claimant first informed the Commission she was disputing Dr. H's certification on May 1, 2000.

Rule 130.5(e) provides as follows:

> The first certification of MMI and [IR] assigned to an employee is final if the certification of MMI and/or the [IR] is not disputed within 90 days after written notification of the MMI and IR is sent by the Commission to the parties, as evidenced by the date of the letter, unless based on compelling medical evidence the certification is invalid because of:
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> (1) a significant error on the part of the certifying doctor in applying the appropriate AMA Guides and/or calculating the [IR];

(2) a clear mis-diagnosis or a previously undiagnosed medical condition; or

(3) prior improper or inadequate treatment of the injury which would render the certification of MMI or [IR] invalid.

In this case, written notice of the first certification was sent to the parties by the Commission on January 18, 2000. The hearing officer also found that the claimant did not dispute Dr. H's certification until May 1, 2000, which was more than 90 days later.

While the claimant testified that she disputed Dr. H's certification on March 24, 2000, there was conflicting evidence concerning this. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). 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 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review, we find sufficient evidence that the claimant first disputed Dr. H's assessment on May 1, 2000, which was clearly more than 90 days after her receipt of Dr. H's certification.

As far as the claimant's contention that Dr. H did not comply with the AMA Guides is concerned, we note that the claimant on appeal only points to Table 36 of the AMA Guides to support this. Table 36 shows that a doctor may award from zero to ten percent for a torn meniscus. In light of this we do not find error with the hearing officer finding that Dr. H properly applied the AMA Guides in assessing the claimant’s IR.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Robert W. Potts
Appeals Judge