APPEAL NO. 002395

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On September 13, 2000, a contested case hearing (CCH) was held. The appellant (claimant) appealed. The respondent (carrier) responded. The hearing officer decided that Dr. T's certification of maximum medical improvement (MMI) on December 29, 1998, with a zero percent impairment rating (IR), became final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e)(Rule 130.5(e)). The version of Rule 130.5(e) in effect for the time period under consideration provided that "[t]he first [IR] assigned to an employee is considered final if the rating is not disputed within 90 days after the rating is assigned."

DECISION

The hearing officer's decision is affirmed.

The claimant sustained a compensable low back injury on _____, and initially treated with Dr. T, who diagnosed a back sprain and prescribed physical therapy. An MRI showed a mild disc bulge at L5-S1. In a Report of Medical Evaluation (TWCC-69) dated December 31, 1998, Dr. T certified that the claimant reached MMI on December 29, 1998, with a zero percent IR. Dr. T's report of December 31, 1998, was the first certification of MMI and IR. The claimant changed treating doctors to Dr. H in January 1999. The claimant said that he received written notice of Dr. T's certification of MMI and IR in January 1999. The hearing officer's finding that the claimant received written notice of Dr. T's certification of MMI and IR on January 31, 1999, is not disputed.

The claimant testified that upon receiving written notice of Dr. T's certification of MMI and IR, he immediately called the carrier's adjustor and disputed those findings; however, the adjustor's notes reflect that the claimant did not dispute Dr. T's certification until June 2, 1999. The claimant said that he also immediately called the Texas Workers' Compensation Commission (Commission) to dispute Dr. T's certification; however, the Commission's Dispute Resolution Information System contact data reflect that the claimant did not raise a dispute about Dr. T's certification until June 2, 1999.

The claimant testified that Dr. T's certification of MMI and IR was not based on an examination. Dr. T's records reflect that he examined the claimant on several occasions prior to certifying MMI and an IR. The claimant contends for the first time on appeal that Dr. T's TWCC-69 contains Dr. T's stamped signature. No evidence was adduced at the CCH regarding that matter nor was it brought up in argument. It is not known whether the signature on Dr. T's TWCC-69 is the stamped signature of Dr. T or is Dr. T's original signature. The Appeals Panel has previously rejected the contention that a stamped signature, absent evidence indicating unauthorized execution by someone other than the doctor, constitutes a basis for invalidating a certification. Texas Workers' Compensation Commission Appeal No. 950777, decided June 26, 1995. We note that Rule 130.1(d)(1)(A), effective June 7, 2000, allows a certifying doctor to use a rubber-stamp signature.

The hearing officer found that within 90 days of January 31, 1999, or on or before May 1, 1999, the claimant did not notify either the carrier or the Commission that he disputed Dr. T's certification of MMI and IR and the hearing officer concluded that Dr. T's certification of MMI on December 29, 1998, with a zero percent IR became final pursuant to Rule 130.5(e). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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:

Kathleen C. Decker
Appeals Judge

Susan M. Kelley
Appeals Judge