APPEAL NO. 002436

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 3, 2000. The hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) for the appellant (claimant) assigned by Dr. Z became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE 130.5(e) (Rule 130.5(e)). The claimant appealed the adverse determination on the grounds of sufficiency of the evidence. The respondent (carrier) filed a response urging that the evidence was sufficient to support the determination of the hearing officer and should be affirmed.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that on March 12, 1999, Dr. Z certified the claimant to have reached MMI on March 12, 1999, with a 0% IR; that Dr. Z was the first doctor to certify MMI and assign an IR; and, that the claimant did not dispute the MMI and IR issued by Dr. Z on March 12, 1999, until July 12, 2000.

The claimant on appeal, as at the CCH, contended that she never received written notice of Dr. Z's certification of MMI and IR, claiming that the signature on the return receipt card offered by the carrier and admitted into evidence was not hers. The claimant denied that she signed the return receipt.

The record contains a letter from the carrier's adjuster reflecting that she sent a copy of Dr. Z's Report of Medical Evaluation (TWCC-69) and a Notice of Certification of MMI and IR (TWCC-28) to the claimant by certified mail, return receipt requested, on May 18, 1999, to the claimant's address at (Address No. 1) and that she had been using this address since receipt of the claim. The adjuster noted that the claimant had not complained and that all correspondence had been sent to the address without a problem. A United States Postal Service return receipt card addressed to the claimant at (Address No.1) evidenced a purported signature by the claimant and that she received the letter on May 22, 1999.

The claimant testified that her actual address was (Address No. 2), her zip code was (Zip code No. 2) rather than (Zip code No. 1), and that she did not receive notice of Dr. Z's MMI date and IR through the mail. The claimant denied that the signature was hers. She initially admitted that she had received other letters from the carrier at this address but subsequently stated that she had not.

The claimant admitted that she signed two documents offered by the carrier which were admitted into evidence: a notification of a CCH scheduling and a Request to Change

Treating Doctor (TWCC-53). During closing argument the carrier contended that the signatures for these documents were the same as the one on the return receipt card evidencing receipt by the claimant of the adjuster's letter on May 22, 1999.

The hearing officer wrote in his Statement of the Evidence that the other documents in evidence containing the claimant's signature appeared to match the signature on the return receipt card and made a finding that the claimant first received written notice of Dr. Z's certification of MMI and IR on May 22, 1999.

Rule 130.5(e) provides that the first IR assigned to an injured worker becomes final if not disputed within 90 days after written notice of the assignment is sent to the parties. The 90 days runs from the date the parties are given written notice of the rating. Texas Workers' Compensation Commission Appeal No. 960220, decided March 20, 1996. The fact that a party was not aware of the 90-day rule does not excuse the failure to comply with the rule. Texas Workers' Compensation Commission Appeal No. 94269, decided April 20, 1994. The exceptions to the operation of Rule 130.5(e), adopted on March 13, 2000, are not applicable to this case.

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. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. We find the evidence sufficient to support the determination of the hearing officer.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Philip F. O'Neill
Appeals Judge