

## APPEAL NO. 002601

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 18, 2000. The issues at the CCH were whether the claimant's spondylolisthesis was a result of the compensable injury of \_\_\_\_\_, and whether the first certification of maximum medical improvement and impairment rating (IR) assigned by Dr. K became final under Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)).

The hearing officer held that claimant's spondylolithesis was a preexisting condition which was not aggravated by his injury and that as he had failed to timely dispute the first IR assigned to him, it became final.

The claimant has appealed and recites facts which he believes should change the decision. The carrier responds that the hearing officer is the primary fact finder and his decision is supported.

### DECISION

We affirm.

The hearing officer has fairly summarized the facts. On the matter of the notice issue, he evidently believed, and is supported by the evidence, that the claimant's contacts with both the adjuster and the Texas Workers' Compensation Commission which took place focused primarily on the claimant's desire for continued medical treatment. Even during the claimant's testimony at the CCH, his dissatisfaction with the IR rendered by his first treating doctor, Dr. K, was cast in terms of being discharged by Dr. K when he still felt like he required more treatment, and that he should not have been discharged.

The filing of a Employee's Request to Change Treating Doctors (TWCC-53) does not in and of itself constitute a dispute of the IR unless it mentions the claimant's desire to dispute. Texas Workers' Compensation Commission Appeal No. 961232 decided August 8, 1996. The Commission notes that reference the TWCC-53 state only that claimant sought a change when Dr. K would no longer treat him.

On the matter of extent of injury, there was medical evidence showing that the claimant had degenerative conditions, arthritis, and spondylosis throughout his spine. At least two doctors (including Dr. K) opined that this was a preexisting condition and had not been aggravated by his compensable injury. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). As

the decision on both issues has support in the record, we affirm the hearing officer's decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Kathleen C. Decker  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge