

APPEAL NO. 011110
FILED JULY 06, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 6, 2000. In Texas Workers' Compensation Commission Appeal No. 010405, decided April 17, 2000, we remanded the case to the hearing officer to reconstruct that portion of the hearing that was missing from the audiotape. A hearing on remand was held on May 4, 2001, with (hearing officer) presiding as the hearing officer because the hearing officer who presided at the February 6, 2001, hearing is no longer employed by the Texas Workers' Compensation Commission (Commission). With respect to the issue before him on remand, the hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) did not become final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). In its appeal, the appellant (carrier) argues that the hearing officer's determination that the first certification of MMI and IR did not become final because the claimant disputed it within the 90-day period provided for doing so is against the great weight of the evidence. In addition, the carrier "objects to the remanded hearing in this case being heard by a different hearing officer than heard the initial [hearing]." In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the first certification of MMI and zero percent IR assigned by Dr. G did not become final under Rule 130.5(e) because the claimant disputed it within 90 days of the date he received written notice of the certification. The claimant testified that he received a written report from Dr. G on October 1, 1999, that Dr. G was certifying that the claimant had reached MMI with a zero percent IR and that he came to the Commission that day and disputed the certification of MMI and IR. That testimony provides sufficient evidentiary support for the hearing officer's determination that the claimant timely disputed the certification of MMI and IR and, thus, that it did not become final pursuant to Rule 130.5(e). Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the hearing officer's decision on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier also asserts error in a different hearing officer having presided at the hearing on remand. As we noted above, the hearing officer who presided at the first hearing is no longer employed by the Commission; thus, he was unavailable and there was no other option than to have a different hearing officer preside on remand. In its appeal, the carrier expresses concern over the hearing officer's not having observed the claimant's testimony and instead having listened to the audiotape of that testimony. We note that the carrier did not object to this procedure at the hearing on remand. In any event, the fact that

the hearing officer did not observe the claimant during his testimony is a matter that goes to the weight and credibility of the evidence not to its admissibility and matters of the weight and credibility to assign to the evidence are left to the discretion of the hearing officer under Section 410.165(a).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge