APPEAL NO. 011239
FILED JULY 19, 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 May 9, 2001. With respect to the only issue before her, the hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. B became final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)) because it was not disputed within the 90-day period provided for doing so. In her appeal, the appellant (claimant) contends that the hearing officer erred in determining that Dr. V was not disputing the first certification on the claimant's behalf when he completed the bottom portion of the Report of Medical Evaluation (TWCC-69) from Dr. B and sent that form to the carrier. In the alternative, the claimant asks that we reconsider the interpretation of Rule 130.5(e) requiring that the treating doctor act on behalf of the claimant in disputing, or that she be granted relief under Fulton v. Associated Indem. Co., Cause No. 03-00-00449-CV. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that Dr. V was not acting on behalf of the claimant when he completed the bottom portion of the TWCC-69 from Dr. B such that it was an effective dispute within the 90-day dispute period. Thus, the hearing officer likewise did not err in determining that Dr. B's certification became final pursuant to Rule 130.5(e) and that the claimant reached MMI on May 31, 2000, with an IR of zero percent. The hearing officer was acting within her province as the sole judge of the weight and credibility of the evidence under Section 410.165(a) in deciding to reject the evidence from the claimant and Dr. V which tended to demonstrate that Dr. V's completion of the bottom portion of the TWCC-69 expressing his disagreement with the MMI date and the IR assigned by Dr. B was intended to serve as his dispute of that certification on behalf of the claimant. The hearing officer determined that Dr. V completed the bottom portion of the TWCC-69 in accordance with his obligation to do so as the treating doctor under Rule 130.3(b) and not "on behalf of the claimant or with the claimant's involvement . . . ." The hearing officer's determination in that regard is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination, or the resulting determination that the first certification of MMI and IR became final pursuant to Rule 130.5(e).

We decline the claimant's invitation to reconsider our interpretation of Rule 130.5(e) that the treating doctor must be acting on behalf of the claimant or with the claimant's involvement in disputing the first certification of MMI and IR in order to avoid finality under the rule. Finally, we note that on April 23, 2001, the Acting Executive Director of the Texas Workers' Compensation Commission issued Advisory 2001-05, which states that the

Fulton decision "should not be considered as precedent at least until it becomes final upon completion of the judicial process" and that amended Rule 130.5(e) “remains in effect.”

The hearing officer’s decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge