

APPEAL NO. 011251  
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 (CCH) was held on May 16, 2001. The hearing officer resolved the disputed issues by determining that the first certification of maximum medical improvement (MMI) and impairment rating assigned by Dr. B on May 19, 2000, did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The hearing officer also decided that due to the respondent's (claimant) compensable injury of \_\_\_\_\_, the claimant had disability beginning on April 20, 1999, and continuing through the date of the CCH. The appellant (carrier) appeals and seeks reversal. The claimant responds and urges that the decision and order of the hearing officer be affirmed.

DECISION

Affirmed.

The carrier contends that the hearing officer erred because the first certification by Dr. B became final since the claimant did not dispute the certification within the 90 days required by Rule 130.5(e). The carrier contends that the claimant disputed the certification before commencement of the 90 days, not within the 90 days as stated by Rule 130.5(e). The purpose of the 90 days, under Rule 130.5, is to provide a cutoff date for disputing a certification, not to establish a beginning date for disputes.

In addition, the carrier contends that there was no dispute of the first certification with the involvement of the claimant. It is apparent from the hearing officer's discussion that he determined that the claimant's testimony was credible concerning her involvement in disputing the first certification. Whether Dr. T disputed the certification with the claimant's involvement was a factual determination to be decided by the hearing officer. See Texas Workers' Compensation Commission Appeal No. 000101, decided February 29, 2000.

There is evidence that supports the hearing officer's determination that the claimant had disability from April 20, 1999, to the date of the CCH. Note, disability can extend beyond the MMI date; however, pursuant to Section 408.102, temporary income benefits only continue until the employee reaches MMI, but that does not necessarily mean that disability ends on that date.

The claimant's credibility was a matter for the hearing officer, as the sole judge of the weight and credibility of the evidence, and it was up to him to resolve such conflicts and inconsistencies as were present in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We will not disturb the challenged factual findings of the hearing officer unless we find them so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly

unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We note that the claimant's response to the carrier's appeal states that the claimant disagrees with the hearing officer's findings that (1) there was no misdiagnosis or previously undiagnosed condition and (2) Dr. B's certification was proper and valid at all relevant times. The response was not received by the Texas Workers' Compensation Commission in the time required for an appeal and these matters raised in the response cannot be considered as an appeal.

For these reasons, we affirm the decision and order of the hearing officer.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Robert E. Lang  
Appeals Panel  
Manager/Judge

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Michael B. McShane  
Appeals Judge