APPEAL NO. 011511
FILED AUGUST 8, 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 June 4, 2001. The hearing officer resolved the disputed issue by deciding that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. W on July 8, 1996, has become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (claimant) appeals, asserting that he never received notice of the MMI/IR certification and the respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

On appeal, we will only address the issue, facts, and evidence that were presented and litigated at the CCH. Review of the record in this case indicates that the claimant moved from his old address in 1993. At the time he moved, the claimant testified, he filed a change of address form with the post office. A statement from the local postmaster indicates that change of address information is purged from the files after two years. There is no indication that the claimant notified his employer of his change of address until January 9, 1998. Prior to that date, the employer's human resources records listed the claimant as still residing at his old address. The claimant testified that, during this time, the post office sometimes sent his mail to his old address and sometimes it was sent to his new address. The claimant sustained a compensable injury on May 29, 1996. On July 8, 1996, the claimant's treating doctor certified that the claimant had reached MMI as of that date, with a 0% IR. The Report of Medical Evaluation (TWCC-69) filled out by the claimant's treating doctor shows the claimant's correct address. The claimant's treating doctor states in a letter that it is his office policy to send copies of all Texas Workers' Compensation Commission (Commission) forms and accompanying office notes to the injured worker at the address given by that worker at the time of his initial visit. The claimant's address had not changed between the time of his initial visit with the treating doctor, and the time he was certified as having reached MMI/IR. It is unclear whether the Commission ever sent the claimant an EES-19 form letter. There is nothing in the record to indicate that the claimant ever gave the Commission his correct address. The carrier sent the claimant notification of MMI/IR at his old address on July 17, 1996. No green card indicating that the claimant received the notice of MMI/IR was submitted into evidence. The claimant did not dispute the initial certification of MMI/IR until August of 2000.

Initially, we note that the version of Rule 130.5(e) applicable to this case is the version effective prior to the March 13, 2000, amendment. Rule 130.5(e) provides that the first IR assigned to an employee is considered final if it is not disputed within 90 days after receipt of written notice. Texas Workers' Compensation Commission Appeal No. 94354 decided May 10, 1994. It is undisputed that the claimant did not dispute the first certification of MMI/IR

until August 2000. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). There was conflicting evidence presented on the issue of whether the claimant ever received notice of the first certification of MMI/IR. While the claimant testified that he did not recall ever getting notice of MMI/IR, he also testified that at that time the notice would have been sent, he did not know what MMI/IR meant and would not have attached any significance to it had he received it. The hearing officer weighed the conflicting evidence and determined that the claimant, more likely than not, received the notice of MMI/IR. Nothing in our review of the record indicates that the hearing officer's determination is so against the great weight of the evidence so as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb his determination. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge