APPEAL NO. 012032
SEPTEMBER 26, 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 August 9, 2001. With respect to the issues before him, the hearing officer determined that the respondent's (claimant) _____, compensable injury did not extend to the back, and that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by the claimant's treating doctor on April 12, 1993, did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)), because the claimant did not receive written notice of the certification. In its appeal, the appellant (self-insured) argues that the hearing officer's determination that the first MMI/IR certifications did not become final is against the great weight of the evidence. In addition, the self-insured argues that when the claimant admittedly received "notice"[1] of the 1993 certifications in March 1998, she did not then timely dispute them, so that they became final under Rule 130.5(e). The claimant responds and urges affirmance. Neither party appeals the extent-of-injury determination thus it has become final pursuant to Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the first certification of MMI/IR assigned by the claimant's treating doctor on April 12, 1993, did not become final under Rule 130.5(e)[2]. Rule 130.5(e) provides that the first IR assigned to an injured worker will become final if not disputed within 90 days after the doctor assigned it. The 90 days starts running from the date the parties are given written notice of the rating. Texas Workers' Compensation Commission Appeal No. 960220, decided March 20, 1996. The issue of whether the claimant received written notice of the first MMI/IR certifications was a question of fact for the hearing officer. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The claimant testified that she had never received written notice of the first MMI/IR certifications. While the self-insured alleged that the claimant had notice of the first certification of MMI and IR, it did not introduce evidence that it had mailed the certification or notice of the certification to the claimant in 1993. When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly

[1]"Notice" here is verbal notice, given by the adjuster to the claimant in a telephone conversation in March 1998.

[2]We note that this claim falls under the "old" Rule 130.5(e), prior to the amendment effective March 13, 2000.

wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The self-insured contends that the hearing officer's determination is against the great weight of the evidence. In so arguing, the self-insured emphasizes the same factors on appeal as it had emphasized at the hearing. The significance, if any, of those factors was a matter left to the hearing officer in determining whether the claimant had sustained her burden of proving that she did not receive written notice of the first certification of MMI and IR, triggering her duty to dispute within the 90 days provided for doing so in Rule 130.5(e). The hearing officer resolved the conflicts and inconsistencies in the evidence in favor of the claimant and he was acting within his province as the fact finder in so doing. Our review of the record does not demonstrate that the challenged determination is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse his determination on appeal. Cain; Pool.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(carrier)** and the name and address of its registered agent for service of process is:

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Michael B. McShane
Appeals Judge