APPEAL NO. 012210
FILED NOVEMBER 5, 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 23, 2001. With respect to the issues before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____, extended to include injury to the right elbow and shoulder. In addition, the hearing officer determined that the first certification of the claimant's maximum medical improvement (MMI) date and impairment rating (IR) assigned by Dr. R on October 5, 2000, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The extent-of-injury issue had not been appealed and has become final pursuant to Section 410.169.

The claimant appeals the determination that her MMI and IR certifications became final on the basis that Dr. R did not rate the entire compensable injury, and requests that the decision and order of the hearing officer be reversed on that issue. There is no appeal or response in the file from the respondent (carrier).

DECISION

Affirmed.

There was sufficient evidence in the record to support the hearing officer's determination that the first certification of MMI and IR assigned by Dr. R on October 5, 2000 (MMI of October 5, 2000, and 0% IR) became final under Rule 130.5(e). Rule 130.5(e) states:

> The first certification of MMI and [IR] assigned to an employee is final if the certification of MMI and/or the [IR] is not disputed within 90 days after written notification of the MMI and IR is sent by the [Texas Workers' Compensation] Commission to the parties, as evidenced by the date of the letter, unless based on compelling medical evidence the certification is invalid because of:
>
> (1) a significant error on the part of the certifying doctor in applying the appropriate [Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association] AMA Guides and/or calculating the [IR];
> (2) a clear mis-diagnosis or a previously undiagnosed medical condition; or
> (3) prior improper or inadequate treatment of the injury which would render the certification or MMI or [IR] invalid.

The parties stipulated that Dr. R's certification was the first certification of MMI and IR assigned to the claimant. The Commission mailed an EES-19 letter to the claimant's

address of record, which the claimant testified was the correct address, on October 12, 2000. Pursuant to Rule 102.5(d), the claimant was deemed to have received the certification on October 17, 2000. The claimant testified that she received notice, from Dr. R, of the certification approximately October 24, 2000, that she disagreed with it, and that on October 30, 2000 she told Dr. R she was going to dispute it. The claimant did not dispute Dr. R's certification until February 9, 2001, which is more than 90 days after the date she received written notice from the Commission.

The claimant testified, however, that when she told Dr. R she disagreed with the certification, he told her he would "rescind" his certification. There is no evidence that Dr. R rescinded or amended his certification. The claimant also testified that she fell within subparts (2) or (3) of Rule 130.5(e), in that Dr. R misdiagnosed her condition and did not render adequate treatment of her injury. However, Dr. R's records of August 29, 2000 (wrist and elbow),and September 8, 2000 (shoulder), indicated that he diagnosed a right wrist injury, right elbow sprain, and right shoulder sprain. Later medical records from other doctors differ only in that there are diagnoses of mild CTS and right shoulder impingement syndrome. The hearing officer notes that the claimant received the same treatment for her shoulder from Dr. R and Dr. K, that she has worked her regular job duties since the date of injury, and that her condition was a natural progression of her compensable injury.

Whether the claimant's first certification of MMI and IR assigned by Dr. R on October 5, 2000, became final under Rule 130.5(e) and whether any of the exceptions to Rule 130.5(e) apply are factual issues for the hearing officer to decide. There was conflicting evidence submitted on the disputed issue. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust.

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge