APPEAL NO. 012395
FILED NOVEMBER 21, 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 August 21, 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. C on February 29, 2000, did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (carrier) appealed and the respondent (claimant) responded.

DECISION

The hearing officer's decision is affirmed.

As amended effective March 13, 2000, Rule 130.5(e) provides:

> (e) 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 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 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 of MMI or [IR] invalid.

Rule 130.5(f) provides that "This rule applies to certifications of MMI and [IRs] that have not become final prior to the effective date of this rule." It is undisputed that the amended Rule 130.5(e) applies to this case because Dr. C's February 29, 2000, certification of MMI and IR, which was the first certification of MMI and IR, would not have become final prior to the effective date of the amended Rule 130.5(e).

It is undisputed that the claimant sustained a compensable injury to her right arm. She was initially diagnosed as having a loose body in her right elbow and right elbow epicondylitis, for which she underwent surgery. Subsequent to that surgery, the claimant's treating doctor referred the claimant to Dr. C, who certified that the claimant reached MMI on February 29, 2000, with an 11% IR. On March 10, 2000, the Texas Workers' Compensation Commission sent an EES-19 letter to the claimant notifying her of Dr. C's certification of MMI and IR. Although the hearing officer made no finding of fact regarding whether the claimant timely disputed Dr. C's certification of MMI and IR, the hearing officer

states in the Statement of the Evidence portion of his decision that "In this case there is no evidence or insufficient evidence to show that the Claimant disputed the certification during the 90 day dispute period." Neither party takes issue with that statement.

Subsequent to her surgery and Dr. C's certification, the claimant continued to have problems with her right arm, and in September 2000 a referral doctor began to suspect that the claimant may have compressive neuropathies in her right arm. An EMG and nerve conduction study were done in February 2001, which confirmed that the claimant had an ulnar nerve neuropathy with compression at the right elbow. In April 2001, the claimant underwent a right elbow ulnar nerve transposition. The claimant said that her condition has improved since her April 2001 surgery.

The hearing officer wrote in his Statement of the Evidence that the claimant sustained her burden of proof to show that, based on compelling medical evidence, the treating doctor clearly misdiagnosed or failed to diagnose the compression of the claimant's ulnar nerve which had caused her symptoms since the date of the injury, and that that misdiagnosis or undiagnosed medical condition resulted in improper or inadequate medical care. The hearing officer made findings of fact that the claimant's condition had been misdiagnosed and as a result, she received improper or inadequate treatment of her injury. The hearing officer concluded that the first certification of MMI and IR assigned by Dr. C on February 29, 2000, did not become final under Rule 130.5(e).

Conflicting evidence was presented at the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 011974-S, decided October 10, 2001.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL ST.
DALLAS, TEXAS 75201.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge