

APPEAL NO. 012596
FILED DECEMBER 18, 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 September 26, 2001. The hearing officer determined that (1) the first certification of maximum medical improvement (MMI) and impairment rating (IR) on November 15, 2000, did not become final under Tex. W.C. Comm'n, 28 TEX ADMIN. CODE § 130.5(e) (Rule 130.5(e)); (2) the compensable injury of _____, includes injuries to the thoracic and lumbar areas but does not include carpal tunnel syndrome, cervical, or right shoulder injuries; and (3) the respondent (carrier) is not estopped from disputing the compensability of the claimed right shoulder injury in this proceeding. The appellant (claimant) appeals each of the hearing officer's determinations. No response was filed by the carrier.

DECISION

Affirmed.

90-Day Rule

Rule 130.5(e) provides, in pertinent part, that the first certification of MMI/IR is final if the certification is not disputed within 90 days after written notification of the MMI/IR is sent by the Texas Workers' Compensation Commission (Commission) to the parties, as evidenced by the date of the letter, unless based on compelling medical evidence the certification is invalid. We have said that no particular words of art are required to raise a dispute. Texas Workers' Compensation Commission Appeal No. 92394, decided September 17, 1992.

The evidence shows the carrier filed a Notice of [MMI/IR] Dispute (TWCC-32) within 90 days after written notification of the first MMI/IR was sent by the Commission to the parties. This is not disputed by the claimant. Rather, the claimant asserts that the TWCC-32 is not sufficient to dispute the first IR certification because the notice does not specifically mention the IR disputed. In the space provided in its TWCC-32 for disputing IR, the carrier provided the following response: "%." Elsewhere on its notice of dispute, however, the carrier indicated that a reasonable assessment of the claimant's IR was 0%. In view of the evidence, the hearing officer could find that the carrier timely disputed the first MMI/IR certification. The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Extent of Injury

The claimant asserts that the compensable injury included his neck and right shoulder and that treatment to his right shoulder resulted in right carpal tunnel

syndrome. Extent of injury is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 001909, decided September 27, 2000. There was conflicting evidence presented with regard to this issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Estoppel Issue

The claimant asserts that the carrier should be estopped from disputing compensability of the right shoulder injury, essentially, because the carrier approved and paid for surgery to claimant's right shoulder. Although the appeals panel has recognized an estoppel theory in limited cases, the claimant cites no authority for the proposition that mere authorization or payment for treatment of a body part would constitute an estoppel or waiver to the carrier's letter, contending that the injury did not extend to that body part, and we decline to apply that theory here.

The decision and order of the hearing officer are affirmed.

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

**FRANK A. MONTEMARANO
5205 NORTH O'CONNOR BOULEVARD
IRVING, TEXAS 75039.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge