APPEAL NO. 950163

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act), a contested case hearing was held in (city), Texas, on December 28, 1994, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) injured her left knee but not her hip, back or neck on (date of injury), and that the first impairment rating (IR) of 11% became final not having been disputed in 90 days of its receipt. Claimant urges error in the finding that she did not injury her hip, back, or neck in the incident of (date of injury), and in that the 11% IR, although including a four percent for her shoulder does not cover her injury to her hip, back, or neck, and that she did not have any idea that she had anything to dispute, believing that the remaining injuries would continue to be treated. The respondent (carrier) urges that the evidence is sufficient to support the determinations of the hearing officer.

DECISION

Finding no error and sufficient evidence to support the hearing officer's decision, we affirm.

The pertinent evidence is fairly and adequately set forth in the hearing officer's Decision and Order and will not be repeated here. Succinctly, the claimant sustained a compensable injury on (date of injury), when she jumped and twisted coming down some steps to avoid a poisonous snake. Although she did not fall she testified that she twisted her knee and hit her shoulder and hip on the stair railing. In any event, although she stated that she told her doctor, (Dr. C) that in addition to her severely injured knee, her back, shoulder and hip hurt, this is not mentioned in any early medical report. She was treated over a long period for an injury to her knee which included two different surgeries, one in (month year) and the other in April 1993. Claimant acknowledged that in October 1993 she was the victim of domestic violence and although she minimized the injury to her at that time, namely a twisting of her right arm, she did go to an emergency room for treatment. Her treating doctor subsequently determined that she reached maximum medical improvement (MMI) on "4-20-94" and based upon an impairment evaluation and report of a (Dr. S), assessed an impairment rating of 11%. The lengthy report of Dr. S is attached to Dr. C's certification of MMI and IR and details the examination and work-up of the claimant in assessing the impairment. The claimant acknowledged that she told Dr. S about all of her complaints at the time of the examination. A copy of Dr. C's report was sent to the claimant and was received in May 1994. Although she did not recall exactly when she disputed the MMI and IR, she stated it was sometime after she moved in June 1994. She testified that she did not know there was any reason to dispute Dr. C's report because she thought it was just for the knee even though four percent of the rating is for the shoulder. The records of the Commission were officially noticed and the first indication of dispute by the claimant occurred on October 12, 1994.

The hearing officer determined that the claimant had not disputed the MMI and IR within 90 days of receiving it and that it became final under Rule 130.5(e). Clearly, there

was sufficient evidence to support this determination. Indeed, the claimant's own testimony tends to confirm that notice was not given within 90 days as she stated she did not think there was any reason to dispute the rating since she thought it was only the knee being rated. The report itself discounts this theory as it not only rates the knee and rates the shoulder at four percent, but also mentions the claimant's assertion of other complaints and appropriately addresses them. We find no basis to conclude that the hearing officer's determination was so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Regarding the issue of extent of the claimant's injury on (date of injury), there is sufficient evidence to support the hearing officer's determination. The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Section 410.165(a). The Appeals Panel does not substitute its judgment for that of the hearing officer where there is sufficient evidence supporting the hearing officer. Texas Workers' Compensation Commission Appeal No. 92706, decided February 1, 1993; Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994. Not only was there an absence in the early medical reports of injury to the back, hip and neck, injuries now asserted, but there was also an intervening incident that Dr. C indicates in his notes of November 4, 1994, followed the "alleged beating" in October 1993, after which the claimant complained she "aches all over." The hearing officer could reasonably infer based on this evidence that the (date of injury) injury did not extend to the hip, neck, and back as now urged. Although another doctor she treated with following her move in June 1994 opined in a letter dated December 1, 1994, that "I think the symptoms now are related to her injury which happened about two years ago," this does not amount to the great weight and preponderance of the evidence in any way mandating a reversal of the hearing officer's finding. Lopez v. Hernandez, 595 S.W.2d 180, 183 (Tex. Civ. App.-Corpus Christi 1980, no writ).

The decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge