APPEAL NO. 950276

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 27, 1995, a contested case hearing was convened in (city), Texas, with (hearing officer) presiding. The issues were whether the first impairment rating (IR) assigned to the appellant, (claimant), who is the claimant herein, became final in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)), because it was not disputed within 90 days, claimant's date of maximum medical improvement (MMI), and her correct IR. The claimant had been injured on (date of injury), while employed by (employer).

The hearing officer found that claimant's first IR had become final because it was not disputed within 90 days of June 30, 1993, when she became aware of it. Accordingly, claimant reached MMI on June 15, 1993, with a nine percent IR.

The claimant has appealed, personally and through her attorney, arguing that she should be relieved from the effect of the "90-day rule" because she promptly went to an attorney who failed to dispute the IR as he was hired to do. The claimant states that an Appeals Panel decision in point should be reversed. The claimant argues that she should be assigned the 35% IR assessed by her current treating doctor. The carrier responds that the attorney was the agent of the claimant and his actions or inactions are attributable to her, and that the decision should be affirmed.

DECISION

We affirm.

The facts were undisputed. Medical evidence recites a history that claimant fell on her buttocks, injuring her back. Claimant said that her treating doctor, (Dr. S), sent to her (Dr. D) for further evaluation. On June 8, 1993, Dr. D examined claimant, and on June 15, 1993, he issued a TWCC-69, Report of Medical Evaluation, with attached narrative, certifying that claimant reached MMI on June 15, 1993, with a nine percent IR, derived from assessment of a cervical and lumbar injury. Dr. D noted reasons why range of motion figures for both regions were judged invalid. The narrative report shows that a copy was sent to the claimant.

Dr. S, on that same date, also issued a TWCC-69 to the same effect. He wrote to the local office of the Texas Workers' Compensation Commission (Commission) on June 28, 1993, noting that while the rating did not take into effect her pain, it was done according to guidelines and he agreed with it.

Claimant stated that she had hired a local attorney, (Mr. B), in February 1993 for assistance on her claim. She stated that she took the IR to him sometime in June 1993, with the objective of disputing it, and he assured her he would handle it. Claimant said she checked back with him sometime in August 1993 and was assured that things were under control. Claimant stated that when she went to his office in September or October 1993, a

sign on his office door indicated he was no longer practicing law in the area. She stated other attorneys she consulted told her there was nothing she could do, and it was not until early 1994 that a clinic urged her to seek redress through the Commission. It appeared from the Commission dispute resolution log, admitted as a hearing officer exhibit, that a disagreement to the first IR was conveyed to the Commission on September 21, 1994. A request for change of treating doctor had been filed on June 1, 1994, but it does not state facts from which a disagreement with the IR is evident.

Claimant stated that her new doctor, (Dr. M), a chiropractor, has assessed a 35% IR. His report was submitted into evidence. No designated doctor had been appointed to act in the case pending resolution of the finality issue.

While we are not without sympathy for claimant given the sequence of events to which she testified, we agree that Rule 130.5(e), and our decision in Texas Workers' Compensation Commission Appeal No. 94379, decided May 12, 1994, require affirmance in this case. The decision in Appeal No. 94379 involved facts substantially similar to this case; we do not agree with the claimant that there is a basis for reversing that decision. An attorney acts as the agent of the claimant, and his/her action or inaction within the scope of employment are attributable to the claimant. Texas Workers' Compensation Commission Appeal No. 93664, decided September 15, 1993.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The record in this case does not lead us to the conclusion that the hearing officer's determination has been clearly wrong, and the decision and order of the hearing officer are accordingly affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge