

APPEAL NO. 960282  
FILED MARCH 29, 1996

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 January 12, 1996, in [City], Texas, with [hearing officer] presiding as hearing officer. The issue at the CCH was whether the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by [Dr. M] become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5 (Rule 130.5). The hearing officer found that Dr. M's certification that the claimant attained MMI on May 24, 1994, with an IR of nine percent had become final. The claimant appeals contending that Dr. M's MMI and IR certification had not become final because Dr. M failed to do range of motion (ROM) testing; to take into account the results of an MRI in making his certification; and to include any impairment for a herniated cervical disc. The claimant also complains that the hearing officer admitted into evidence documents which were not exchanged prior to the CCH. The respondent (carrier herein) replies that the claimant's appeal is insufficient, that Dr. M's IR became final under Rule 130.5(e) and that there was no error, or at the most harmless error, in the hearing officer's admission of evidence from the claimant's Texas Workers' Compensation Commission (Commission) file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

It was stipulated that on [date of injury], that the claimant suffered a compensable injury to his back. It was undisputed that Dr. M became the claimant's treating doctor. It was also stipulated that the first certification of MMI and IR was assessed by Dr. M on June 22, 1994. Dr. M certified on a Report of Medical Evaluation (TWCC-69) that the claimant attained MMI on May 24, 1994, with a nine percent IR. The claimant testified that he received a copy of the MMI certification on July 6, 1994, and that shortly thereafter he discussed this certification with the Commission personnel. The claimant testified that he did not dispute Dr. M's certification until October 22, 1995.

The carrier sought to admit into evidence records from the Commission's files showing that the Commission mailed Dr. M's TWCC-69 to the claimant by certified mail and he received it on July 6, 1994. The claimant objected to the admission of these records on the grounds that they had not been exchanged. The hearing officer admitted these documents on the basis of her duty to develop the record. The hearing officer found that Dr. M's certification of MMI and IR had become final pursuant to Rule 130.5(e) in that they were not timely disputed.

The claimant contended that he was not required to dispute Dr. M's certification because it was invalid. On appeal he specifically claims that Dr. M's certification was invalid in that Dr. M failed to test his ROM, did not take into an MRI in making his certification and did not rate his cervical herniated disc.

Rule 143.3 provides as follows in relevant part:

(a) A party to a benefit contested case hearing who is dissatisfied with the decision of the hearing officer may request the appeals panel to review the decision. The request shall:

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(2) clearly and concisely rebut each issue in the hearing officer's decision that the appellant wants reviewed, and state the relief appellant wants granted. . .

From the claimant's request for review it is clear that the claimant is complaining of the hearing officer's determination that Dr. M's rating became final arguing that this certification was not valid. The claimant also argues that the hearing officer's admission of documents not exchanged with him was error. Claimant could have stated these complaints in a more formal fashion than he did. However, in considering challenges to the adequacy of a request for review, we have been mindful of the general rule that where pleadings are required in administrative proceedings, their validity should not be tested by the technical niceties of pleading and practice required in court trials. Texas Workers' Compensation Commission Appeal No. 91131, decided February 12, 1992. Where we can surmise that the main thrust of a document filed with the Appeals Panel complains of the sufficiency of the evidence to support the hearing officer's determination, we have found that it meets the minimum requirements for an appeal. Texas Workers' Compensation Commission Appeal No. 92081, decided April 14, 1992. The claimant's request for review in the present case exceeds some we have found in the past to meet these minimum standards. See Texas Workers' Compensation Commission Appeal No. 94455, decided May 19, 1994; Texas Workers' Compensation Commission Appeal No. 94598, decided July 6, 1994.

Rule 130.5(e) provides as follows:

The first impairment rating assigned to an employee is considered final if the rating is not disputed within 90 days after the rating is assigned.

We have held that a TWCC-69 that is invalid on its face cannot become final under Rule 130.5(e). See Texas Workers' Compensation Commission Appeal No. 94109, decided September 29, 1994; Texas Workers' Compensation Commission Appeal No. 950026,

decided February 17, 1995. Here we find no invalidity on the face of the TWCC-69 as it was signed, dated and the MMI date was not prospective. There is no indication on the face of the TWCC-69 that Dr. M failed to consider all reports, failed to rate the claimant's entire injury or failed to test his ROM. The type of complaints the claimant has regarding the certification are those we have held should be raised during the 90 days. See Texas Workers' Compensation Commission Appeal No. 950794, decided June 30, 1995. We do not have a basis for holding as matter of law that the TWCC-69 was invalid or that the hearing officer erred in finding that it became final under Rule 130.5(e).

Finally, we consider the claimant's assignment of error concerning the hearing officer's admission of documents from the Commission file that were not timely exchanged. We are unaware of any doctrine stating that the hearing officer's duty to develop the record allows ignoring the exchange requirements of Rule 142.13(c). The documents of which the claimant complained showed that the Commission mailed a copy of Dr. M's TWCC-69 to the claimant and the claimant received it on July 6, 1994. The claimant later testified under cross-examination to these same facts. Any error in the admission of these documents was thus harmless error. See Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The decision and order of the hearing officer are affirmed.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Judy L. Stephens  
Appeals Judge