APPEAL NO. 990763

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 3, 1999, a hearing was held. She determined that the initial impairment rating (IR), dated May 19, 1998, by Dr. C provided to appellant (claimant) became final under the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e)(Rule 130.5(e)). Claimant asserts that there was no evidence that written notice was mailed by the respondent (carrier) to claimant and there was evidence that claimant did not receive written notice of the initial IR. Carrier replied that the decision should be affirmed.

DECISION

We affirm.

Claimant and carrier stipulated that claimant sustained a compensable injury to the right knee and low back on _____; that Dr. C examined claimant under the provisions of a required medical examination; and that Dr. C certified on May 19, 1998, that claimant reached maximum medical improvement (MMI) on May 12, 1998, with a 13% IR, and that such IR was the initial IR.

Claimant testified that she received several pieces of correspondence from carrier but did not remember receiving anything in writing about the initial IR. However, she answered "yes" to a question, propounded by carrier as question number 12 in written interrogatories, that said, "[i]s it true, as you stated at the benefit review conference on this claim on 1/06/99, that you had written notice of [Dr. C's] 5/12/98 certification of [MMI] with a 13% [IR] sometime in May of 1998?" At the time, she was represented by counsel. While at the hearing, she testified that this answer was a "mistake"; however, she answered the next question on interrogatories, which was, "[i]f your answer to question 12 is no state what date you learned of [Dr. C's] certification of [MMI] with a 13% [IR]," by stating "not applicable," which could be reasonably inferred to show that claimant knew she answered "yes" to question 12, and had not mistakenly answered "no." This admission by claimant is sufficient itself to support a determination that claimant received written notice of the initial IR in May 1998.

Documents in evidence also included an unsigned copy of a May 21, 1998, letter by carrier to claimant which stated that a copy of a medical report was attached. It also said that MMI was reached on May 12, 1998, with a 13% IR according to the doctor; it told her she had 90 days to dispute with the Texas Workers' Compensation Commission (Commission), and it gave the Commission's telephone number. Typed at the top of this letter, to the side of claimant's name, was "certified # P 099 697 508." This letter also showed a copy of a receipt for certified mail to claimant. Also in the record is a copy of a postal receipt with the number "P 099 697 508" written thereon; it is signed (claimant) and is dated "5-26-98."

Claimant cites Texas Workers' Compensation Commission Appeal No. 950982, decided July 28, 1995. That decision said a letter without any evidence of mailing was not sufficient to show written notice was given. The case under review has evidence of mailing, through the receipt for certified mail and through claimant's signed receipt of mail showing the same certified number as that typed on the letter itself. These documents, along with the determination that claimant disputed the initial IR in November 1998 which is not appealed, sufficiently support the finding of fact that claimant did not timely dispute the initial IR. These findings of fact and the evidence in support thereof sufficiently support the conclusion of law that the first certification of IR became final under Rule 130.5(e).

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge