APPEAL NO. 992004

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 August 12, 1999. She (the hearing officer) determined that the first certification of maximum medical improvement (MMI) and an impairment rating (IR) by (Dr. H) became final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (claimant) appeals this determination, expressing his disagreement with it. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant sustained a previous bilateral inguinal hernia injury for which he underwent repair in November 1996, and which is not the subject of these proceedings. On _____, he suffered a slip-and-fall accident at work, which was initially diagnosed as a recurrent hernia. On November 14, 1997, Dr. H completed a Report of Medical Evaluation (TWCC-69) in which he certified MMI on November 12, 1997, and assigned a zero percent IR.

Rule 130.5(e) provides that the first IR "assigned to an employee is considered final if the rating is not disputed within 90 days after the rating is assigned." If the first IR becomes final under this rule, then the underlying date of MMI also becomes final. Texas Workers' Compensation Commission Appeal No. 92670, decided February 1, 1993. It was not disputed that Dr. H's certification was the first IR assigned to the claimant for purposes of this rule. The claimant admitted that he received written notice of this certification on December 19, 1997, and did not dispute it within 90 days. He argues that the certification did not become final because it was based on a misdiagnosis by Dr. H.

In a letter of April 14, 1999, Dr. H explained that when he saw the claimant on November 12, 1997, he was asked to evaluate the possibility of a recurrence of the hernia injury as an explanation for the claimant's groin pain. He said that his examination disclosed no evidence of recurrence and for this reason assigned a zero percent IR and that this IR "was meant to refer only to that day's office visit and the physical findings <u>on that day</u>." (Emphasis in original.) In a letter of January 12, 1998, Dr. V suggested that the correct diagnosis was likely some nerve entrapment syndrome rather than a hernia. Later examination confirmed that the injury was ilioinguinal neuritis. The parties stipulated that the claimant sustained a "compensable injury" on _____.

In Texas Workers' Compensation Commission Appeal No. 93489, decided July 29, 1993, the Appeals Panel observed that if there were evidence that the first certification was based on a clear misdiagnosis, the passage of 90 days would not be dispositive. The

Texas Supreme Court rejected this notion in Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 248 (Tex. 1999), wherein it held that the "plain language of the 90-day Rule does not contain exceptions" created by the Appeals Panel such as a so-called exception based on a misdiagnosis of the injury. The hearing officer applied Rodriguez to the facts of this case and concluded that Dr. H's certification of MMI and IR became final.

In his appeal of this determination, the claimant argues that Rodriguez should not apply to certifications made before the date of the decision and suggests that Rodriguez was wrongly decided. The Supreme Court did not limit its decision to a prospective application only, and the Appeals Panel is bound by its terms. Texas Workers' Compensation Commission Appeal No. 991410, decided August 19, 1999; Texas Workers' Compensation Commission Appeal No. 991307, decided July 28, 1999. To the extent that the claimant premises his appeal on ignorance of the terms of Rule 130.5(e), we note that, in general, ignorance of the law does not excuse noncompliance with its terms. Texas Workers' Compensation Commission Appeal No. 94269, decided April 20, 1994. And to the extent that the claimant appeals on the basis that Dr. H, in his letter of April 14, 1999, rescinded his prior certification, thus preventing the application of the 90-day rule, we have held prior to the Rodriguez case that a first certifying doctor may for a proper reason rescind the certification, but such recission is effective to avoid application of the rule only if done within the 90 days available to dispute the first certification. Texas Workers' Compensation Commission Appeal No. 990056, decided February 24, 1999, and cases cited therein. In the case we now consider, even if Dr. H is presumed to have rescinded the certification on April 14, 1999, this was well beyond the 90 days allotted to the claimant to raise a dispute. However egregious the results appear to be in this case, we are bound to follow the applicable law.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Susan M. Kelley
Appeals Judge