APPEAL NO. 000111

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 December 13, 1999. With regard to the only issue before her, the hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. L on December 29, 1997, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)).

Appellant (claimant) appeals, asserting that the first assigned certification of MMI and IR by Dr. L did not comply with the requirements of Rules 130.1, 130.2, and 133.3 and, therefore, is not legally valid or binding. Claimant contends that Dr. L's assessment was "an incomplete evaluation report." Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent (carrier) responds that a certification of MMI and IR for purposes of Rule 130.5(e) is separate and "distinct" from completing a medical evaluation report. Carrier urges affirmance.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable injury to her right knee in the form of a torn lateral meniscus on _____. Claimant testified that Dr. L was her treating doctor; that Dr. L referred her to Dr. P, who performed surgery on the right knee, apparently in December 1997; and that she then returned to the care of Dr. L.

Dr. L, on a Report of Medical Evaluation (TWCC-69) dated December 29, 1997, certified MMI on December 24, 1997, with a zero percent IR. Carrier presented documentary evidence that a copy of the report was sent by certified mail to the claimant and was signed for on January 28, 1998. The hearing officer found that claimant received notice of Dr. L's first certification of MMI and IR "on or about January 28, 1998." It is also undisputed, and the hearing officer found, that claimant did not dispute Dr. L's first certification within 90 days of receiving the notice. It was claimant's contention, both at the CCH and on appeal, that Dr. L's first certification was invalid because it did not fully comply with Rules 130.1 (Reports of Medical Evaluation), 130.2 (Certification of MMI by the Treating Doctor) and 133.3 (Responsibilities of the Treating Doctor). Claimant, in her appeal, sets out the provisions of those rules in some detail.

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 party receives it. That rule only requires that, by necessity, MMI is certified and an IR be assigned. The rule does not require the completion of a medical evaluation done in accordance with Rules 130.1 and 130.2 as a condition precedent to certifying an MMI date and assigning an IR. As carrier

notes, certification of MMI and assignment of an IR is distinct from completing a medical evaluation report. Essentially, the same argument claimant makes here was made in Texas Workers' Compensation Commission Appeal No. 93330, decided June 10, 1993, where the notice of the first certification of MMI and assignment of the IR was made through a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21). The employee in that case contended that the documents, including a TWCC-69, did not constitute a proper certification of MMI and IR. The Appeals Panel agreed with the hearing officer, stating that the issue before him was not whether those documents constituted a "certification" under Rule 130.1 but whether the employee's dispute of the first IR assigned was timely under Rule 130.5(e).

The Appeals Panel has held that "certain questions regarding the validity of the first certification of MMI and the assignment of an [IR] must be brought forward in a dispute within 90 days of notification in writing of the findings." Texas Workers' Compensation Commission Appeal No. 94475, decided June 3, 1994. Citing our decision in Appeal No. 93330, *supra*, the decision in Appeal No. 94475, *supra,* held that the challenge to the validity of the first TWCC-69 based on the doctor's failure to complete that portion of item 14 calling for documentation of objective laboratory or clinical findings of impairment, "where the doctor has in fact reported the date of MMI and assigned a 13% [IR] in the TWCC-69, should have been brought forward by way of disputing the certification of MMI or assignment of [IR] within 90 days of receiving written notice of the assignment of the [IR]." *See also* Texas Workers' Compensation Commission Appeal No. 950794, decided June 30, 1995. Claimant and the hearing officer both cite Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 248 (Tex. 1999) for the proposition that the plain language of Rule 130.5(e) does not contain exceptions and an IR is considered final if not disputed within 90 days. In this case, we hold that an IR under Rule 130.5(e) need not contain all the elements of a medical evaluation required in Rules 130.1 and 130.2 and it is up to the party disagreeing with that rating to dispute the rating within 90 days of receiving written notice of it.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are 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). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge