

APPEAL NO. 000252

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, 2000. The only issue at the CCH was whether the first certification of maximum medical improvement and impairment rating (IR) assigned by Dr. M on January 16, 1996, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (claimant) appealed, contending that he has had a substantial change of condition, which should be an exception to Rule 130.5(e). The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant sustained an injury to his low back on \_\_\_\_\_. On January 9, 1996, the first IR was rendered by Dr. M, who certified a 12% IR. The claimant knew he had received this in writing, but could not precisely remember, although he believed it was a month later. The claimant did not dispute this IR until October 1999, after he had back surgery and felt his condition had worsened. The claimant testified that when he was told about the 12% IR, he thought it was "enough" at the time. He sought relief from the finality of the first IR based upon a substantial change in his condition or an inadequate diagnosis at the time the first IR was rendered. The last time the claimant had worked was in September 1997. He was in increasing pain and could not do any lifting.

The claimant's recitation of his worsening back condition was persuasive. This is a case, however, where the result to be reached in this case was essentially mandated by Rule 130.5(e), which provided that the first IR assigned to the injured worker would become final if not disputed within 90 days. This rule was for finality purposes in this case.

Although there were decisions in the past from the Appeals Panel finding that the rule would not apply in certain circumstances, these circumstances were eliminated by the Texas Supreme Court in Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 248 (Tex. 1999). We cannot agree that the hearing officer has erred, because she has applied this case, as she must do, even if she believed all the evidence concerning the claimant's medical condition. The decision and order are affirmed.

---

Susan M. Kelley  
Appeals Judge

CONCUR:

---

Stark O. Sanders, Jr.  
Chief Appeals Judge

---

Judy L. Stephens  
Appeals Judge