APPEAL NO. 000272

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 14, 2000. The issue at the CCH was whether the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. V on February 18, 1999, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The hearing officer determined that since Dr. V did not assign the claimant an IR on February 18, 1999, no certification of MMI and IR of that date became final under Rule 130.5(e). The hearing officer also found that the report of Dr. V dated February 18, 1999, was mailed to the claimant by the Texas Workers' Compensation Commission (Commission) on April 1, 1999; that the claimant was deemed to have received the report of Dr. V on April 5, 1999; and that the claimant first disputed the report of Dr. V on October 7, 1999. The determinations concerning mailing, deemed receipt, and disputing the report of Dr. V have not been appealed and have become final under the provisions of Section 410.169. The appellant (carrier) appealed the determination that Dr. V did not assign an IR on February 18, 1999, and that the February 18, 1999, report did not become final. The carrier stated that on March 24, 1999, Dr. V clarified the report, indicating that the claimant's IR was zero percent; said that Dr. V's clarification was sufficient to invoke Rule 130.5(e); and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that Dr. V's certification that the claimant reached MMI on January 28, 1999, with a zero percent IR became final under Rule 130.5(e). The appeal file does not contain a response from the claimant.

DECISION

We affirm.

The Report of Medical Evaluation (TWCC-69) from Dr. V dated February 18, 1999, states that the claimant reached MMI on January 28, 1999. Dr. V did not enter an IR on the TWCC-69, but in the space provided to enter an IR wrote "not performed." The Commission sent Dr. V a form that states "[p]lease provide the information for the items marked with an "X" below." An "X" was placed before "Box 18: Indicated MMI was reached in Box 17, but [IR] was left blank. [IR]:_____." The form is signed by Dr. V, is dated March 24, 1999, and contains "zero" in the space after IR.

In Texas Workers' Compensation Commission Appeal No. 941137, decided October 10, 1994, Dr. P examined the claimant at the request of the carrier and on July 8, 1993, assigned a nine percent IR and concluded that "without surgical intervention" the claimant had reached MMI. The carrier sent Dr. P's report to Dr. G and Dr. G completed a TWCC-69 in which he certified that the claimant reached MMI on July 13, 1993, with a nine percent IR. The hearing officer determined that the certification of Dr. P was invalid and that the certification of Dr. G became final under the provisions of Rule 130.5(e). The Appeals Panel stated that Rule 130.5(e) applies only to the first certification of MMI and IR, held that

Dr. P's certification was the first certification of MMI and IR and that Rule 130.5(e) did not apply to the certification of Dr. G, and reversed the decision of the hearing officer and remanded for the appointment of a designated doctor. The Appeals Panel wrote:

> We conclude that Rule 130.5(e) applies only to the chronologically first, written certification of MMI and IR. Whether that certification is ultimately found valid or invalid is important for considerations of finality under the rule. A determination that it is valid, obviously brings the rule into play. A contrary determination–that it is invalid–serves only to make the rule inapplicable to that certification. It does not preserve the rule for possible reapplication to a later "first valid" rating. To hold otherwise would expose parties to numerous possible "final" ratings, each succeeding the other, without any confidence as to which is "first" until all prior ratings in due course are determined invalid.

In Texas Workers' Compensation Commission Appeal No. 93259, decided May 17, 1993, the Appeals Panel reversed the decision that the first certification of MMI and IR became final under the provisions of Rule 130.5(e) and rendered a decision that it did not. The first certification of MMI and IR contained a prospective date of MMI. The Appeals Panel stated that there was no valid date of MMI; that without a valid date of MMI, there could be no valid IR; and that there was nothing that could become final under the provisions of Rule 130.5(e). In the case before us, the TWCC-69 that is the first certification contains "not performed" in the space to enter the IR. It was not valid on its face. *See Texas* Workers' Compensation Commission Appeal No. 941619, decided January 20, 1995. The first certification of Dr. V dated February 18, 1999, is not valid and there was nothing that could become final under the provisions of Rule 130.5(e).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge