APPEAL NO. 000577

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 February 29, 2000. With regard to the issue before him, the hearing officer determined that the first certification of maximum medical improvement (MMI) of February 19, 1998, and zero percent impairment rating (IR) certified by Dr. W on February 19, 1998, became final under Tex. W.C. Comm=n, 28 TEX. ADMIN. CODE ' 130.5(e) (Rule 130.5(e)). The claimant appeals certain of the factual determinations, asserting that Dr. W=s first certification Awas not valid@ because Dr. W did not see claimant on the date of the certification and that claimant did not receive Dr. W=s report until March 1999 when it was promptly disputed. Claimant requests that we reverse the hearing officer=s decision and render a decision in his favor. The respondent (carrier) responds to the points raised by claimant and urges affirmance.

DECISION

Affirmed.

Claimant was employed as a stone cutter by the employer. Claimant testified how on _____, a stone split and a part of it grazed his head. Claimant was sent to Dr. W who saw claimant on February 9, 1998. In evidence is an Initial Medical Report (TWCC-61), dated February 12, 1998, of the February 9th visit and a two-page narrative dated February 9, 1998. Dr. W assessed a Aclosed head injury, stable. Cervical strain. Lumbar strain@ and returned claimant to limited work. Claimant was apparently again seen in the office on February 12, 1998, by Ms. G, apparently a physician=s assistant or nurse practitioner. Ms. G entered a progress note showing a resolving back strain. In another progress note dated February 19, 1998, Ms. G notes that claimant is 17 days post injury; that he was Acompletely asymptomatic@; and that claimant Awill now carefully return to all of his usual functional activities.@ Also in evidence is an undated, unsigned Anarrative history@ reciting the date of injury of February 2nd, the extent of the injury, that claimant Awas evaluated on 02/12/98, 02/19/98" and that the Apatient was returned to regular activity and released from care on 2/19/98.@ That document may have been the narrative for a Report of Medical Evaluation (TWCC-69) dated February 19, 1998, certifying claimant reached MMI on February 19, 1998, with a zero percent IR signed by Dr. W as the treating doctor.

Ms. E, the employer=s claims coordinator, testified that on March 12, 1998, she sent Dr. W=s TWCC-69 to claimant with proper postage at the (street) address that claimant had given the employer=s payroll system. There is also evidence that claimant was sent a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated June 23, 1998, which references an MMI certification of February 19, 1998, with a zero percent IR and referenced Rule 130.5(e), and that the A>0' impairment is final.@ The TWCC-21 was sent to claimant=s (street) address and was receipted for on June 30, 1998, as evidenced by a Agreen card@ receipt. Other evidence, including claimant=s testimony, indicates that at least some mail was

being received and receipted for at the (street) address which is the address claimant had given the employer. It is relatively undisputed that claimant did not dispute Dr. W=s IR until March 31, 1999.

The hearing officer made the following appealed determinations:

FINDINGS OF FACT

7. The [February 19, 1998, TWCC-69] report was valid on its face.

8. On March 12, 1998, the Employer mailed a copy of the TWCC-69 of February 19, 1998, to the Claimant, along with a cover letter that informed the Claimant that [Dr. W] certified that the Claimant had reached [MMI] with an [IR] of 0% and the necessary information for the Claimant to use if he disagreed with any part of the medical evaluation.

9. The Employer sent the letter to the Claimant=s address on (street) in Austin.

10. The Claimant received mail at the (street) address as late as June of 1998.

11. The Claimant received the Employer=s letter and notification of [MMI] and [IR] in March of 1998.

12. The Claimant did not dispute the certification and [MMI] and [IR] assigned by [Dr. W] until March 31, 1999, more than 90 days after the date when he would have received the Employer=s letter.

13. The Claimant did not timely dispute the first certification of [MMI] and assignment of [IR], and they became final.

Claimant appealed those findings, asserting, both on appeal and at the CCH, that Dr. W=s February 19, 1998, TWCC-69 was Ainvalid on its face@ or Awas not valid@ because claimant did not see and was not examined by Dr. W on that date, but rather was only seen by Ms. G. We disagree. Claimant testified that he was seen and examined by Dr. W on February 9, 1998, and the hearing officer made an unappealed finding that claimant

Areceived medical treatment from [Dr. W] several times.@ Whether Dr. W saw claimant only once as claimant states, or Aseveral times@ as found by the hearing officer, is relatively immaterial as long as Dr. W had, in fact, examined him. Rule 130.5(e) provides that the first IR assigned to an injured worker becomes final if not disputed within 90 days. This period starts when a party receives written notice of that IR. Texas Workers= Compensation Commission Appeal No. 951229, decided September 5, 1995. A situation similar to the instant case was addressed in Texas Workers= Compensation Commission Appeal No. 980526 (Unpublished), decided April 29, 1998, where the Appeals Panel held that the report was not Ainvalid on its face@ but appeared valid on its face, as does the TWCC-69 in this case. The Appeals Panel went on to comment that the fact that the doctor Adid not do an examination the day he completed the TWCC-69, and the effect of this on the zero percent IR and MMI certification, is the type of contention that must be raised within the 90-day period.@ A TWCC-69 may be completed sometime after the last examination is conducted, which, in this case, was February 9, 1998, and the deferred completion of the TWCC-69, based on subsequent treatment, does not, per se, invalidate the report. It certainly would not be Ainvalid on its face.@ Instances of where the first certification of MMI and IR is invalid on its face are where the form is not signed or there is a prospective date of MMI or where on the face of the form the doctor only considered a portion of the injury. *See* Texas Workers= Compensation Commission Appeal No. 941098, decided September 29, 1994.

Claimant also contends that he had not received Dr. W=s TWCC-69 until March 30, 1999. As noted above, the employer=s claim coordinator testified that she had mailed a properly addressed and stamped report to claimant at the address he gave the employer=s payroll system and carrier provided evidence that claimant was receiving mail at that address as late as June 1998. Carrier contends that the Amailbox rule@ applies and that receipt was deemed five days from mailing. In Texas Workers= Compensation Commission Appeal No. 980541, decided April 29, 1998, the Appeals Panel held that receipt of a TWCC-69 may be proved by circumstantial evidence, citing Texas Workers= Compensation Commission Appeal No. 962190, decided December 13, 1996, and has upheld the mailbox rule (service by mail or notice by mail in an envelope with proper postage is complete upon deposit in the post office or other mail depository) in Texas Workers= Compensation Commission Appeal No. 961272, decided August 14, 1996. The hearing officer found that claimant

received the employer=s March 12, 1998, letter and notification of MMI and IR Ain March of 1998.@ That finding is supported by the evidence, claimant=s testimony about the limit and extent of his receiving mail at the (street) address notwithstanding.

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:

Alan C. Ernst
Appeals Judge

Elaine M. Chaney
Appeals Judge