APPEAL NO. 000712

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 March 13, 2000. The hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. M on March 14, 1997, became final pursuant to Tex. W.C. Comm=n, 28 TEX. ADMIN. CODE ' 130.5(e) (Rule 130.5(e)). The appellant (claimant) appeals, asserting that he disputed Dr. M=s certification on the same day that he received notice of it and that the hearing officer=s decision should be reversed. The respondent (carrier) replies that the hearing officer=s decision is supported by legally and factually sufficient evidence and should be affirmed.

DECISION

Reversed and rendered.

The claimant sustained a compensable low back injury on _____, and received medical treatment from Dr. M. On March 14, 1997, Dr. M issued a Report of Medical Evaluation (TWCC-69) certifying the claimant reached MMI on March 14, 1997, with a zero percent IR. The claimant testified that on the same day he received Dr. M=s TWCC-69 in the mail, he contacted Dr. M to ask him about it since Dr. M had referred him to another doctor. The claimant said that Dr. M told him that his office had made a clerical error and that he would take care of it. On April 21, 1997, Dr. M issued a letter addressed to the carrier which states:

> Apparently the TWCC-69 form on [the claimant] was sent to you by mistake, I had released [the claimant] to work but had not completely released him from my medical care. He has had some exacerbation of his lower back pain and I have referred him on to a spinal specialist for further evaluations and treatment. I=m sorry if this misunderstanding has caused problems in his Workman=s Compensation.

The carrier presented evidence that the claimant was informed of Dr. M=s certification of MMI and IR in a letter dated March 25, 1997, which was received by the claimant on April 21, 1997.

The Texas Workers= Compensation Commission=s (Commission) Dispute Resolution Information System (DRIS) notes indicate that on April 30, 1997, the Commission called the adjuster regarding the claimant=s average weekly wage and the adjuster stated that the claimant=s doctor had rescinded the claimant=s certification of MMI. The DRIS notes indicate that the first time the claimant contacted the Commission following Dr. M=s certification was on August 16, 1999, when he called and said that he had received Dr. M=s certification, that it was done in error, and that Dr. M had rescinded the certification. On September 22, 1999, the claimant contacted the Commission asking what he could do to get income benefits resumed.

The claimant asserts that Dr. M rescinded his certification of MMI and IR within 90 days and this prevented his certification from becoming final. The carrier argues that there is no rule or statute providing for a rescission of a certification and, under Rodriguez v. Service Lloyds Ins. Co., 997 S.W.2d 248 (Tex. 1999), the Commission is not authorized to create such an exception. In the alternative, the carrier argues that the claimant has failed to demonstrate that the rescission was for a Aproper reason@ because Dr. M only states that the certification was a mistake but does not mention what type of mistake or how or why a TWCC-69 was executed.

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. The Appeals Panel has held that the 90-day period begins to run from the date that the party receives notice of the certification of MMI and IR in writing. Texas Workers' Compensation Commission Appeal No. 94354, decided May 10, 1994. It is undisputed that the claimant received notice of Dr. M=s certification no later than April 30, 1997. In Texas Workers= Compensation Commission Appeal No. 970021, decided February 20, 1997, we stated that Aif, in the 90-day dispute period, the doctor certifying MMI and IR rescinds his certification for a proper reason, that rescission operates to prevent the certification from becoming final under Rule 130.5(e)," citing Texas Workers' Compensation Commission Appeal No. 961178, decided July 31, 1996.

The hearing officer found that the claimant did not dispute Dr. M=s certification until September 22, 1999; that there was no proper reason to rescind the March 14, 1997, certification; and that the first certification of MMI and IR assigned by Dr. M on March 14, 1997, became final under Rule 130.5(e). In so determining, the hearing officer states:

> In fact, the only evidence of the reason for the Arecission [sic]@ is the Claimant=s testimony that the doctor told him the certification was a Aclerical error@, and the doctor=s April 21, 1997 letter to the Carrier regarding the recission [sic]. The Aclerical error@ explanation is unpersuasive; to pass off a physical examination, calculation of an IR, execution of a TWCC-69 form, and mailing of that form to different parties, as a mistake akin to a missed keystroke on a typewriter is obviously an untenable position. The doctor=s letter is likewise not persuasive, in that the doctor evidently equates A[MMI]@ with cessation of any need for medical care. Such as [sic] erroneous concept cannot form the basis for a Aproper reason@ to rescind an IR/MMI certification. Consequently, the Claimant has not met his burden to show why [Dr. M=s] certification should not be deemed to have become final.

The carrier argues that under Rodriguez, *supra*, the Commission is not authorized by statute or rule to create an exception to Rule 130.5(e). We are not persuaded by the carrier=s argument because timely rescinding a certification does not constitute an Aexception.@ If a doctor rescinds his or her certification, there is nothing to become final and nothing to dispute.

See Texas Workers= Compensation Commission Appeal No. 000065, decided February 24, 2000.

We observe that a valid theory not advanced by the claimant was whether Dr. M=s rescission was a dispute for purposes of Rule 130.5(e). Dr. M, within 90 days, stated that his certification was a Amistake.@ This case, unlike Appeals Panel No. 970021, *supra*, does not involve a certifying doctor whose actions subsequent to the certification may or may not be interpreted as a rescission. Dr. M=s statement that the certification was a Amistake,@ without additional explanation, was sufficient to constitute a proper reason for the rescission. We conclude that the hearing officer=s determination that there was no proper reason to rescind the March 14, 1997, certification is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex.1986). Accordingly, we reverse the hearing officer=s decision that the first certification of MMI and IR assigned by Dr. M on March 14, 1997, became final under Rule 130.5(e) and render a decision that the first certification of MMI and IR assigned by Dr. M on March 14, 1997, did not become final under Rule 130.5(e).

Dorian E. Ramirez
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge