

APPEAL NO. 000894

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 appellant's (claimant) commutation of impairment income benefits (IIBs) was not valid and final and that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. F became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). Neither party has appealed the IIBs commutation determination and it has, thus, become final. Claimant appeals the Rule 130.5(e) determination, asserting that because Dr. F's IR was invalid as a matter of law in that the form it was on did not comply with the requirements of Rule 130.1(c), claimant was not required to dispute it under Rule 130.5(e). The file does not contain a response from the respondent (self-insured).

DECISION

Affirmed.

Although the hearing officer's Decision and Order recites that the parties entered into seven stipulations of fact which became Finding of Fact Nos. 1a through g, the transcript of the hearing reflects that no stipulations were entered into on the record. We will not reverse, however, because claimant has not complained of any part of Finding of Fact No. 1 on appeal.

Finding of Fact Nos. 1e and f state that claimant received the Report of Medical Evaluation (TWCC-69) completed by Dr. F, and that she did not dispute Dr. F's certification of MMI or the IR within the required 90-day period.

Claimant testified that she slipped in water at work on _____, and fell, and that she suffered a "hard impact" to both knees; that Dr. F examined both knees but only treated the left; that when Dr. F assigned her the four percent IR on November 20, 1998, he "suggested" she continue to seek treatment for the right knee; that she underwent surgery on her left knee; and that after she later underwent surgery on her right knee, the self-insured accepted liability for the right knee injury. With regard to Dr. F's TWCC-69 assigning the four percent IR, claimant acknowledged that she "may have" called the adjuster in December 1999 about the TWCC-69 and offered to fax it to the adjuster.

Dr. F's TWCC-69 dated "11/25/98" certifies that claimant reached MMI on "11/20/98" with an IR of "4%." Dr. F's accompanying narrative report states that claimant notes complete resolution of the preoperative symptomatology of her left knee with return of flexibility, strength, and function; that she still notes anterior discomfort in her right knee which is aggravated with climbing, squatting, and kneeling; that she still has episodes of puffiness; and that repeat evaluation and follow-up visits for her right knee are recommended. Also in evidence is Dr. F's TWCC-69 dated "07/09/99," which certifies that claimant reached MMI on "07/07/99" with an IR of "4%." Dr. F's accompanying narrative

report reflects that this IR is for the right knee and claimant indicated she underwent surgery on the right knee in April 1999. The self-insured's documents reflect that the self-insured contested the compensability of claimant's right knee in January 1999 and rescinded its dispute in April 1999.

The version of Rule 130.5(e) in effect prior to the March 13, 2000, effective date of the amended Rule 130.5(e) provides that "[t]he first [IR] assigned to an employee is considered final if the rating is not disputed within 90 days after the rating is assigned." The Texas Supreme Court has interpreted that version of the rule as containing no exceptions. Rodriguez v. Service Lloyds Insurance Co., 997 S.W.2d 248 (Tex. 1999).

Rule 130.1(a), in part, states that a doctor who determines during the course of treatment that an employee has reached MMI or has impairment shall complete and file a medical evaluation report as required by this rule. Rule 130.1(c) provides that all reports made under this rule shall be on a form prescribed by the Texas Workers' Compensation Commission (Commission) and shall contain the various items of information set out in Rule 130.1(c)(1) through (7) including (1) the workers' compensation number assigned to the claim by the Commission and (5) a narrative history of the employee's medical condition. Claimant contends on appeal that the hearing officer erred in applying Rule 130.5(e) because Dr. F's IR was invalid for the reasons that Dr. F's TWCC-69 did not contain the Commission's number assigned to the claim and a narrative history of claimant's medical condition. Dr. F's TWCC-69 does bear claimant's name, address, and social security number; the self-insured's claim number; and Dr. F's name and address and professional and federal tax numbers, as well as diagnostic codes. The accompanying narrative report discusses claimant's compliance with the exercise program following the surgery, her release to return to her job, and the basis for the four percent IR for her left knee, in addition to the status of her right knee.

We are satisfied that the hearing officer's determination of the appealed issue is sufficiently supported by the evidence (In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951)) and that Dr. F's TWCC-69 is in substantial compliance with the requirements of Rule 130.1(c) and did not result in the IR being invalid. The Appeals Panel has held that the 90-day period begins to run when the claimant becomes "aware" of the rating (Texas Workers' Compensation Commission Appeal No. 92693, decided February 8, 1993) and that the certification of MMI and IR and the communication of such to the parties requires "a writing." Texas Workers' Compensation Commission Appeal No. 94354, decided May 10, 1994. In the latter decision we also noted (with citations) that the Appeals Panel has previously determined that a writing which amounts to the functional equivalent of the TWCC-69 form will suffice.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Thomas A. Knapp
Appeals Judge