APPEAL NO. 001381

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 May 24, 2000. The hearing officer determined that the appellant/cross-respondent (claimant herein) worked for the employer and sustained a compensable injury and that the first certification of maximum medical improvement (MMI) and impairment rating (IR) by Dr. L became final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The claimant appeals, alleging numerous points of error and asking that we reverse the decision of the hearing officer. The respondent/cross-appellant (carrier herein) files a request for review, appealing the hearing officer's factual finding that Dr. L did not intend to certify MMI and IR. Otherwise, the carrier argues that we should affirm the decision of the hearing officer.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Most of the relevant facts of the case are disputed. The claimant, while working on a power line on _____, was struck by lightning. The claimant spent most of the night in the emergency room. The claimant returned to work from October 27, 1997, through March 26, 1998, but testified that he was experiencing significant symptoms from his injury and lost intermittent time from work. The claimant was receiving a course of conservative treatment from Dr. L, who was the claimant's family doctor. In January 1998, the claimant's employer requested a medical release without restrictions so that the claimant could continue to work. The claimant requested Dr. L provide such a release. Dr. L prepared a Report of Medical Evaluation (TWCC-69) dated January 12, 1998, in which he certified that the claimant attained MMI on November 24, 1997, with a zero percent IR. The claimant did not dispute this certification within 90 days of receiving written notice of it. The claimant's condition worsened and he has been unable to work since March 26, 1998, due to his compensable injury. Dr. L stated as follows in a letter dated February 1, 2000:

> My purpose in assigning the 0% [IR] to [the claimant] was so he could return to work. At the time I assigned the [IR], I believed that there would be further material recovery and lasting improvement of [the claimant's] condition.

The hearing officer's findings of fact include the following:

FINDINGS OF FACT

5. The full nature and extent of the Claimant's injuries were not known on January 12, 1998, when [Dr. L] completed the [TWCC-69].

6. [Dr. L] did not intend to certify MMI/IR on January 12, 1998.

7. Prior to March 13, 2000, there were no exceptions to Rule 130.5(e).

8. If the Claimant's certification of MMI/IR were determined prior to Rodriguez [Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 248 (Tex. 1999)], or became final after March 13, 2000, there would be a different result.

9. The Claimant did not dispute the original certification of MMI/IR within 90 days.

Rule 130.5(e), which went into effect on January 25, 1991, provided as follows:

> The first [IR] assigned to an employee is considered final if the rating is not disputed within 90 days after the rating is assigned.

A number of Appeals Panel decisions have dealt with interpreting and applying this rule. We held that this time does not begin to run until a party has received written notice of the assignment of an IR. Texas Workers' Compensation Commission Appeal No. 951229, decided September 5, 1995. We have previously held that ignorance of the law is no excuse. Texas Workers' Compensation Commission Appeal No. 94269, decided April 20, 1994. We had held that, where there is a clear misdiagnosis or egregious error in a first IR, finality of the first rating may not occur under the 90-day provision of Rule 130.5(e). Texas Workers' Compensation Commission Appeal No. 93489, decided July 29, 1993; Texas Workers' Compensation Commission Appeal No. 950928, decided July 21, 1995.

In Rodriguez, *supra*, the majority clearly stated that the Appeals Panel had exceeded its authority in finding exceptions to Rule 130.5(e) and that, absent a timely dispute, an IR became final pursuant to Rule 130.5(e). Based upon the clear language of the decision, the Appeals Panel recognized that there was not an exception to the 90-day rule due to misdiagnosis or egregious error. In the wake of Rodriguez, the Texas Workers' Compensation Commission promulgated a revised Rule 130.5, which includes exceptions to the finality when an IR certification is not disputed within 90 days. However, the effective date of the new rule is March 13, 2000, and, in its terms, it does not apply to certifications of IR that became final prior to its effective date. *See* Rule 130.5(e). Therefore, clearly, the version of Rule 130.5(e) that became effective on January 25, 1991, applies in the present case. As interpreted by the majority in Rodriguez, this rule has made Dr. L's certification of MMI and IR final and rendered us powerless to hold otherwise.

The claimant argues that other issues should have been added to the disputed issues at the CCH and that the hearing officer should have admitted certain exhibits, but the addition of these issues and the admission of these exhibits were only to further advance the essential argument of the claimant that Dr. L's certification should not become final pursuant to Rule 130.5(e) in light of the facts of the present case. While the claimant argues for exceptions to Rule 130.5(e) to prevent the harsh result from applying it without exception in the present case, we simply lack any authority, just as the hearing officer

lacked any authority, to make any exception whatsoever in light of the Texas Supreme Court's decision in Rodriguez.

The carrier argues that the great weight and preponderance of the evidence is contrary to the hearing officer's Finding of Fact No. 6, which is quoted above. The carrier argues that this finding is only supported by Dr. L's letter of February 1, 2000. The carrier argues that this letter was drafted by the claimant's counsel and, as such, should not be considered Dr. L's opinion, even though he signed the letter. We find no merit in this argument and find Dr. L's letter of February 1, 2000, sufficient evidence to support the hearing officer's Finding of Fact No. 6.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Susan M. Kelley
Appeals Judge