APPEAL NO. 002339

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 18, 2000. The appellant (self-insured) and the respondent (claimant) stipulated that on _____, Dr. M certified that the claimant reached maximum medical improvement (MMI) on May 3, 1999, with a five percent impairment rating (IR); that Dr. M's certification was the first certification of MMI and IR; and that the claimant first received written notification of Dr. M's certification on June 3, 1999. The hearing officer determined that the claimant disputed the first certification sometime in March 2000, that the first certification was a conditional certification, and that it did not become final because it was conditional. The self-insured appealed; stated that there are no exceptions to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)), contended that if there was an exception to Rule 130.5(e) for conditional certifications of MMI and IR, the certification of Dr. M is not a conditional certification; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the first certification of MMI and IR by Dr. M became final. The claimant responded, contended that the hearing officer did not misapply the law, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We reverse the decision of the hearing officer and render a decision that the first certification of MMI and IR by Dr. M became final under the provisions of Rule 130.5(e).

The claimant testified that she injured both hands; that she had pain up into her shoulders; that she was diagnosed with bilateral carpal tunnel syndrome (CTS); that she wanted to have surgery on both hands to limit the time she would miss work; that Dr. M did not agree to that; that Dr. M performed surgery on the left wrist in March 1999; that on _____, Dr. M assigned an IR only for the right hand; that she did not receive an IR for the left hand; that she thought she would receive an IR for the left hand after she had surgery on it; that she had surgery on the left hand on February 23, 2000; that she wanted to receive money from the self-insured since she as not able to work; that she was told that she had reached MMI and could not get any more money; that she disputed the certification of MMI and IR by Dr. M; and that it was probably in March 2000 that she disputed that certification.

In a report of an initial consultation dated September 10, 1998, Dr. M, an orthopaedic surgeon, stated that the diagnosis was bilateral CTS and that conservative treatment would be started. Dr. M continued to treat the claimant conservatively, including injection into the right carpal tunnel, until he performed a right carpal tunnel release on February 17, 1999. In a report of a follow-up evaluation dated March 22, 1999, Dr. M stated that the claimant was doing very well after the right carpal tunnel release; that the claimant had problems with the left hand in the area of the extensor tendon mechanism to the thumb; that he believed that the claimant had de Quervain's disease of the left hand;

that he gave her a prescription for cream to apply to both hands; and that the claimant had some numbness in the ulnar nerve distribution of her right hand which he believed will dissipate because it was not constant. In a follow-up evaluation report dated May 3, 1999, Dr. M said that the claimant was complaining of pain in the ulnar nerve distribution; that she stated that at times that pain was fairly severe; that she also had some tingling in her median nerve distribution; that she would try medication for six weeks; that he believed that she had reached MMI in regard to her right carpal tunnel; that he would send her to Dr. R for independent range of motion (ROM) measurements of the right hand; that an IR will be forthcoming; and that she may return to full and active duty at work on May 10, 1999.

In a Report of Medical Evaluation (TWCC-69) dated _____, Dr. M certified that the claimant reached MMI on May 3, 1999. On the TWCC-69, the space to enter an IR is left blank. "See narrative" is written after the space to enter an IR. The complete text of the narrative that is attached to the TWCC-69 is as follows:

> [IR]:
>
> DIAGNOSIS: Right [CTS].
>
> HISTORY: [Claimant] was referred to [Dr. R] for independent [ROM] measurements of the right wrist. Enclosed is a copy of the worksheet used by [Dr. R].
>
> Based on those measurements, [claimant] has a 0% whole body partial permanent impairment due to decreased [ROM]. I believe she has a 5% whole body partial permanent impairment due to decreased sensation as a result of the [CTS].
>
> In regard to the patient's right [CTS], I believe her impairment stands at 5%. This does not include impairment for her ulnar nerve entrapment.

In a letter dated March 28, 2000, Dr. M stated that the IR assigned on _____, applied only to the right wrist; that the claimant had surgery on the left wrist on February 23, 2000; and that the claimant is not at MMI concerning the left wrist.

In Texas Workers' Compensation Commission Appeal No. 992958, decided February 16, 2000, the hearing officer determined that the first certification of MMI and IR was conditional and did not become final under the provisions of Rule 130.5(e). The Appeals Panel discussed numerous cases concerning conditional certifications of MMI and IR; commented on the broad language used in Texas Workers' Compensation Commission Appeal No. 991489, decided August 30, 1999, and quoted by the hearing officer in the Decision and Order before us; reversed the decision of the hearing officer; and rendered a decision that the first certification of MMI and IR was not conditional and that it became final under the provisions of Rule 130.5(e). In Appeal No. 992958, *supra*, the Appeals Panel wrote:

> The above cited cases also used modifiers such as "clearly, express, and specified"; one doctor said his IR would be "invalidated." The doctors providing the IRs in the cited cases also make it clear that they were addressing the IR and MMI as being conditional–except for Appeal No. 990799, *supra* [Texas Workers' Compensation Commission Appeal No. 990799, decided June 2, 1999], which considered a chart note 10 days later which spoke of claimant needing a second opinion as to surgery. These cases may be compared to the case under review in which Dr. F did not refer to any specific pending problem, any pending treatment, or any question of what body part was affected, and he did not indicate that the future, unspecified, possible treatment he referred to would affect his IR or MMI but only said that if claimant became "symptomatic," "treatment options" and "medical care" should be available or permitted, neither of which depend upon whether IR or MMI have been reached, at least according to Section 408.021.

In the case before us, the narrative attached to the TWCC-69 dated _____, does not support a determination that the first certification of MMI and IR was conditional. In numerous decisions, the Appeals Panel has held that if a claimant knows that the first certification of MMI and IR does not include all of the compensable injury, the claimant is required to dispute that rating within 90 days of receiving notice of it. For example, *see* Texas Workers' Compensation Commission Appeal No. 980382, decided April 10, 1998.

We reverse the decision of the hearing officer and render a decision that the first certification of MMI and IR by Dr. M was not a conditional certification of MMI and IR; that the claimant did not dispute the certification within 90 days of having received written notification of it; and that the claimant reached MMI on May 3, 1999, with a five percent IR.

Tommy W. Lueders
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Thomas A. Knapp
Appeals Judge