

APPEAL NO. 002474

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 October 2, 2000. The hearing officer determined that the 25% first certification of maximum medical improvement (MMI) and impairment rating (IR) certified by Dr. Y (the first certification) did not become final because respondent (self-insured) disputed it. Appellant (claimant) appealed, contending that the self-insured did not dispute the first certification within 90 days. The self-insured responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We reverse and render.

Claimant contends the hearing officer erred in determining that the first certification did not become final. It was undisputed that Dr. Y signed a Report of Medical Evaluation (TWCC-69) on January 8, 2000, certifying a 25% IR, and that this was the first certification of MMI and IR. Regarding when the self-insured first received written notice of the first certification, there is nothing in the record to indicate that Dr. Y mailed a copy of the TWCC-69 to the self-insured or third-party administrator. Ms. S, an adjuster handling claimant's case, testified that she did not know when the self-insured or the third-party administrator received the February 11, 2000, EES-19 letter of notification from the Texas Workers' Compensation Commission (Commission) regarding the first certification. The EES-19 letter indicates at the bottom that a copy was sent to the self-insured. Ms. S testified that the self-insured filed a January 20, 2000, Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) that said, "carrier taking credit of TIBS [overpayment] in the amount of \$244.00 (1/14/00- 1/18/00) from future IBS [paid past] the [statutory MMI] date - 10% assessed." When asked whether this was a dispute of the first certification, Ms. S said, "Not that I know of." Ms. S indicated that the 10% assessment was made because claimant was at statutory MMI and he did not have an IR. A Notice of Maximum Medical Improvement/Impairment Rating Dispute (TWCC-32) filed by the self-insured in June 2000 states, "Date TWCC-69 received, June 27, 2000." Ms. S testified she had no knowledge that the self-insured had received a copy of the TWCC-69 before then.

The hearing officer determined that: (1) on January 8, 2000, Dr. Y certified a 25% IR; (2) on January 20, 2000, the self-insured made its reasonable assessment of claimant's IR and filed a TWCC-21 with the Commission; (3) the self-insured's TWCC-21 is sufficient to function as a dispute of [Dr. Y's IR]; (4) on February 11, 2000, the Commission notified claimant and the self-insured by letter about the 25% first certification; and (5) the self-insured "is deemed to have received the [letter] no later than February 16, 2000."

The 90 days begins to run when written notice of the first certification is received. In this case, there is nothing in the record to indicate that the self-insured had received written notice of the first certification at the time it filed the TWCC-21 on January 20, 2000.

Therefore, the 90-day period had not begun at the time the self-insured filed the TWCC-21. Ms. S did not indicate that the TWCC-21 was intended to be a dispute of the first certification. We disagree that the self-insured disputed the first certification on January 20, 2000, as the TWCC-21 was filed before the self-insured had written notice of the first certification. Texas Workers' Compensation Commission Appeal No. 92693, decided February 8, 1993.

For the first time on appeal, the self-insured states that the TWCC-21 was filed "in response to" Dr. Y's 25% IR certification. However, Ms. S testified otherwise. Further, at the hearing, the self-insured contended that there is nothing in the 90-day rule which states that the dispute may not be filed "before" the 90 day period. The self-insured did not assert at the hearing that it filed the TWCC-21 as a dispute after it had received written notice of the first certification. We reverse the determination that the TWCC-21 was sufficient to dispute the first certification and render a determination that the self-insured did not dispute the first certification within 90 days.

The hearing officer stated in the decision that the self-insured filed its TWCC-32 on June 28, 2000, which was more than 90 days after February 16, 2000, the date it was deemed to have received the EES-19 letter notifying the self-insured of the first certification. Therefore, the record does not reflect that the self-insured disputed the first certification within 90 days.

We reverse the hearing officer's decision and render a decision that the first certification of MMI and IR became final and that claimant's IR is 25%.

Judy L. Stephens
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Kenneth A. Huchton
Appeals Judge