

APPEAL NO. 002584

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 17, 2000. The hearing officer resolved the two disputed issues by determining that the first certification of maximum medical improvement (MMI) and the impairment rating (IR) assigned by Dr. S on April 17, 1998, became final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)) and that the compensable injury sustained by the appellant (claimant) on _____, does not extend to an injury to the cervical spine and to a psychological condition (depression and anxiety). The claimant disputes these determinations on appeal. The respondent (carrier) responds that the evidence is sufficient to support the extent-of-injury determination and that the claimant's position on the Rule 130.5(e) issue is without merit.

DECISION

Affirmed.

The claimant asserts on appeal that the certification of an MMI date of March 18, 1998, and the assignment of a nine percent IR for her lumbar spine injury by Dr. S, the treating doctor, should not have become final because she was unaware of the severity of her condition at the time. She also maintains that she proved a causal relationship between her compensable injury and both her cervical spine injury and her depression and anxiety. The response filed by the carrier counters that the claimant's asserted error concerning the Rule 130.5(e) issue is without merit in view of the holding in Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 248 (Tex. 1999); that the claimant's complaint of cervical spine pain was not documented until nearly 18 months after the date of injury; and that her evidence is likewise insufficient to prove that her claimed psychological problems were caused by her compensable injury.

Despite the claimant's testimony that her neck began hurting about a month after she sustained the low back injury pushing on a cart, the first documentation of cervical pain is in Dr. B record of October 19, 1998, which states that the neck pain "is new" and which adds the diagnosis of "acute neck strain." See Texas Workers' Compensation Commission Appeal No. 961912, decided November 13, 1996. The only medical record pertaining to the claimed psychological injury is a psychodiagnostic evaluation of August 20, 1997, which states that the claimant has a high level of anxiety but which in no way relates this condition to the claimant's lumbar spine injury.

The carrier introduced an April 27, 1998, "Notification Regarding [MMI] And/Or [IR] [TWCC-28]" letter to the claimant advising her of Dr. S's report containing the MMI date and the nine percent IR and of her right to dispute it within 90 days. The carrier also introduced an undated "green card" signed by the claimant. The claimant acknowledged her signature on the "green card" but stated that she did not remember the letter.

We are satisfied that the evidence is sufficiently supportive of the appealed findings of fact and that those findings sufficiently support the conclusions of law. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Judy L. Stephens
Appeals Judge