APPEAL NO. 002693

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 September 6 and continued on October 25, 2000. With regard to the only issue before her, the hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. H on August 17, 1998 (all dates are 1998 unless otherwise noted), became final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)).

The appellant (claimant) appealed on a lack of sufficiency of the evidence to support the hearing officer's decision and requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable (left foot and ankle) injury on _____. The claimant began treating with Dr. H, who released the claimant to return to work on June 2. In a Report of Medical Evaluation (TWCC-69) dated August 17, Dr. H certified the claimant at MMI on June 2 with a zero percent IR. The carrier received a copy of Dr. H's report on September 3. There was evidence and testimony that the claimant was sent a copy of Dr. H's certification and a Notification Regarding Maximum Medical Improvement and/or Impairment Rating (TWCC-28) by both certified and regular mail by the carrier. The claimant was notified of the certified letter on September 4, but the claimant did not pick up the letter. The letter sent by regular mail was not returned. Dispute Resolution Information System notes in evidence indicate that the Texas Workers' Compensation Commission (Commission) sent the claimant an EES-19 letter on September 9 advising the claimant of Dr. H's certification. In evidence is a copy of the EES-19 letter dated September 9. The claimant testified that he had not received any correspondence or Dr. H's certification from either the doctor, the Commission, or the carrier. The evidence is in conflict as to when the claimant asserts that he first received written notification of Dr. H's certification. The claimant disputed Dr. H's certification on December 30.

Rule 130.5(e), amended effective March 13, 2000, provides in pertinent part:

> (e) The first certification of MMI and [IR] assigned to an employee is final if the certification of MMI and/or the [IR] is not disputed within 90 days after written notification of the MMI and IR is sent by the Commission to the parties, as evidenced by the date of the letter.

The hearing officer found that the Commission sent an EES-19 letter to the claimant on September 9 advising the claimant of Dr. H's certification and that the claimant was

deemed to have received that letter on September 14 (applying the five day deemed receipt of communication from the Commission, Rule 102.5(d)). The claimant's dispute of the first certification on December 30 was not timely.

We do note a typographical error in the hearing officer's Finding of Fact No. 8 where the September 1 date should be September 14. We reform the hearing officer's decision to conform with the evidence and the Statement of the Evidence.

We conclude that there is sufficient evidence from which the hearing officer could make her decision. Accordingly, the hearing officer's decision and order are affirmed as reformed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge