APPEAL NO. 002820

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 20, 2000, a hearing was held. The hearing officer decided that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. H on July 26, 1996, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (claimant) asserts that the agreement of the parties, as set forth in the hearing officer's decision and order, is not the agreement entered into by the parties. The respondent (self-insured) responded that the decision and order accurately reflects the agreement of the parties and requests that it be affirmed.

DECISION

Affirmed as reformed.

On November 20, 2000, the parties appeared by telephone to decide the issue reported out of the benefit review conference, which was as follows:

> Did the first certification of [MMI] and [IR] assigned by [Dr. H] as of July 26, 1995, become final under Rule 130.5(e)?

The hearing officer read the following stipulations into the record:

a) On June 22, 1995, the claimant was the employee of the City of _____, hereinafter known as the employer, who had Texas workers' compensation coverage through self-insurance.

b) Venue is proper in the _____ Field Office of the Texas Workers' Compensation Commission.

c) On _____, the claimant sustained a compensable injury.

d) The first certification of MMI and IR was assigned by Dr. H and was issued on July 26, 1995.

e) The claimant did not contest the certification of MMI and IR assigned by Dr. H within 90 days of receiving the report from Dr. H.

The self-insured agreed to the stipulations and the claimant, after being specifically asked by the hearing officer if he agreed with the stipulations, indicated that he also agreed to the proposed stipulations.

In his appeal, the claimant asserts that he agreed to Dr. U assignment of MMI and IR, not to Dr. H's. There is nothing in the record which would indicate that any doctor,

other than Dr. H, was mentioned during the hearing and there is no indication that the claimant was induced to enter into the agreement by fraud or duress.

The decision of the hearing officer states that the first certification of MMI and IR by Dr. H on July 26, 1996, became final. The date of July 26, 1996, is clearly a typographical error and will be reformed to accurately reflect the date of Dr. H's report as July 26, 1995.

As reformed, the hearing officer's decision accurately reflects the agreement of the parties as reflected in the parties' stipulations. We note that the claimant argued that he had agreed to accept Dr. U's IR, but the record indicates that the claimant agreed that he received Dr. H's IR and did not dispute it within 90 days. Rule 130.5(e), as it was in effect in 1995 and 1996, did not provide for any exceptions to the finality of the first IR if it was not disputed within 90 days of the date the party asserting that it had not become final received written notice of the rating. The hearing officer did not err in finding that the IR assigned by Dr. H became final under Rule 130.5(e). That determination is supported by the facts stipulated to by the parties.

We affirm the decision and order of the hearing officer, as reformed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge