

APPEAL NO. 002921

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 November 17, 2000. With respect to the single issue before him, the hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). In its appeal, the appellant (carrier) argues that the hearing officer erred in determining that the first certification of MMI and IR did not become final. In his response to the carrier's appeal, the respondent (claimant) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the first certification of MMI and IR did not become final under Rule 130.5(e). Rule 130.5(e), as amended and effective on March 13, 2000, provides that the first certification of MMI and IR becomes final if it is not disputed within 90 days after written notification is sent by the Texas Workers' Compensation Commission "unless based on compelling medical evidence the certification is invalid because of: (1) a significant error on the part of the certifying doctor in applying the appropriate AMA Guides [Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides)] and/or calculating the [IR]; (2) a clear mis-diagnosis or a previously undiagnosed medical condition; or (3) prior improper or inadequate treatment of the injury which would render the certification of MMI or [IR] invalid." The hearing officer determined that Dr. M, the first doctor to certify MMI and assign an IR, used the fourth edition of the AMA Guides; however, Section 408.124 and Rule 130.1(c)(2) provide that for all certifying examinations conducted before October 15, 2001, the appropriated edition of the AMA Guides to use is the third edition, second printing, dated February 1989. The hearing officer's determination that Dr. M used the fourth edition is supported by sufficient evidence and is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Dr. M's IR was issued on January 17, 2000, and could not have become final under the prior Rule 130.5(e). Accordingly, we cannot agree that the hearing officer erred in determining that the first certification of MMI and IR in this case did not become final because Dr. M's use of the incorrect version of the AMA Guides to certify the claimant's IR satisfied the requirements of Rule 130.5(e)(1) such that the certification did not become final even though it was not disputed within the 90-day dispute period. Given our affirmance of the hearing officer's determination that the first certification of MMI and IR did not become final because Dr. M used an inappropriate version of the AMA Guides, we need not address the other basis relied upon by the hearing officer in determining that the first certification of MMI and IR did not become final.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge