

APPEAL NO. 010229

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 January 3, 2001. The hearing officer determined that, "the first certification of maximum medical improvement [MMI] and impairment rating [IR] assigned by [Dr. W] on October 3, 1995 became final under Rule 130.5(e) [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e)]."

The appellant (claimant) appeals, contending that the first certification of MMI was assigned by Dr. S on October 5, 1994. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

On _____, the claimant twisted his knee while employed by (employer). The claimant had five knee surgeries between 1993 and 1995. The parties stipulated that the claimant sustained a compensable injury on _____.

In 1994, the respondent (carrier) requested an independent medical examination (IME). The claimant was sent to Dr. S. In a Report of Medical Evaluation (TWCC-69) dated October 5, 1994, and a narrative dated October 3, 1994, Dr. S certified the claimant as not having reached MMI. On October 5, 1995, Dr. W, the claimant's treating doctor, certified the claimant at MMI and assigned an IR of 13%. Although there was testimony that the claimant spoke with the carrier's adjuster after receiving Dr. W's report to dispute the IR and date of MMI, the hearing officer comments that there was no evidence when that call was made and it would be "pure assumption" to determine that it was made within 90 days of receipt of Dr. W's report.

The claimant bases his appeal on the fact that Dr. S, the carrier's IME doctor, had found him not to be at MMI in 1994 and that report was the first certification of MMI and IR. However, the hearing officer had excluded that report and it cannot be considered. Furthermore, it is problematical whether a report that states that the injured employee is not at MMI (and does not assign an IR) can be the "first [IR] assigned to an employee" under Rule 130.5(e) in effect at that time.

Our affirmance of the hearing officer's decision does not in any way affect the claimant's entitlement to all medical benefits reasonably required for the compensable injury. See Section 408.021.

The hearing officer's decision is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge