APPEAL NO. 010265

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 23, 2001. With regard to the sole issue before him, the hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) became final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (claimant herein) files a request for review arguing that he did dispute the certification by talking to the Texas Rehabilitation Commission (TRC) and that he did not have the knowledge he needed to properly dispute the certification. The respondent (self-insured herein) replies that the hearing officer did not err in finding the first certification of MMI and IR became final and that ignorance of the law is no excuse for the claimant's failure to timely dispute the first certification.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that he injured his low back carrying a buffing machine up a flight of stairs. Dr. C, the claimant's treating doctor, certified on a Report of Medical Evaluation (TWCC-69) dated October 5, 1999, that the claimant attained MMI on September 25, 1999, with a 10% IR. The parties stipulated that this was the first certification of MMI and IR.

There was an EES-19 letter in evidence which showed that the Texas Workers' Compensation Commission (Commission) sent notice of Dr. C's certification to the claimant on October 26, 1999. The claimant testified that he received this on November 1, 1999. The handling adjuster testified that the self-insured mailed a notice of Dr. C's certification to the claimant on October 27, 1999, by certified mail and that the postal return receipt showed the claimant received this notice on November 1, 1999. The claimant testified that he told the TRC that he did not agree with the certification and that he thought the TRC was part of the Commission. It was undisputed that the claimant did not dispute Dr. C's certification with the Commission within 90 days of receiving it.

The hearing officer did not err in determining that the first certification of MMI and IR became final under Rule 130.5(e). The version of Rule 130.5(e) in effect at the time MMI/IR was certified provided that the first IR assigned to an employee is considered final if the rating is not disputed within 90 days after the rating is assigned. We have held that the 90-day deadline for disputing IR does not run from the date a doctor issues a report, but from the date the parties are notified of the rating. Texas Workers' Compensation Commission Appeal No. 93501, decided August 2, 1993. We have also held that certification of MMI/IR and the communication of the same to the parties under Rule

130.5(e) requires a writing. Texas Workers' Compensation Commission Appeal No. 94354, decided May 10, 1994.

Written communications sent by the Commission will be deemed received five days after the date mailed, unless the great weight of the evidence indicates otherwise. Rule 102.5(d) (effective August 29, 1999). With regard to written communications sent between parties, we have said that mail properly placed in the postal system is presumed received. Texas Workers' Compensation Commission Appeal No. 970650, decided May 29, 1997. The evidence shows that the Commission mailed an EES-19 letter to the claimant on October 26, 1999, notifying him of Dr. C's certification. Additionally, there was evidence that the claimant received written notice of Dr. C's certification from the self-insured on November 1, 1999. Finally, we have held that the claimant must dispute the rating with either the Commission or the carrier within 90 days and that ignorance of the law is no excuse for failure to do this. We cannot conclude that the hearing officer's determination that the first MMI/IR certification became final is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge