APPEAL NO. 010492

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 February 20, 2001. With respect to the issue before him, the hearing officer determined that the 14% impairment rating (IR) assigned to the appellant (claimant) by Dr. P became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). In her appeal, the claimant argues that the hearing officer erred in excluding Claimant's Exhibit Nos. 3, 4, 5, 7, 8, 9, and 16. The claimant also contends that the hearing officer erred in determining that she received notice of Dr. P's 14% IR on April 20, 1998, and that it became final under Rule 130.5(e), because the claimant did not timely dispute it. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

Initially, we will consider the claimant's contention that the hearing officer erred in excluding her Exhibit Nos. 3, 4, 5, 7, 8, 9, and 16. The carrier objected to the admission of these exhibits on the grounds that they were not timely exchanged. Finding that the exhibits were not timely exchanged and that good cause did not exist for the failure to do so, the hearing officer sustained the carrier's objection and excluded the exhibits from evidence. Although the decision and order reflects that the exhibits in question were admitted both as claimant's exhibits and hearing officer's exhibits, the hearing officer's ruling at the hearing clearly excluded the exhibits.

Parties must exchange documentary evidence with each other not later than 15 days after the benefit review conference and thereafter, as it becomes available. Rule 142.13(c). We review a hearing officer's evidentiary rulings under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. In this instance, the hearing officer noted that the exhibits could have been produced earlier and the evidence supports that determination. As such, the hearing officer did not abuse his discretion in excluding Claimant's Exhibit Nos. 3, 4, 5, 7, 8, 9, and 16.

Turning to the merits, we initially note that the version of Rule 130.5(e) applicable to this case is the version effective prior to the March 13, 2000, amendment. *See* Rule 130.5(f). The hearing officer did not err in determining that claimant was deemed to have received notice of Dr. P's 14% IR on April 20, 1998. The record reflects that on April 15, 1998, the Texas Workers' Compensation Commission (Commission) mailed notice of Dr. P's certification to the claimant at the last address she had supplied to the Commission. According to the claimant, she was moving frequently from March 1998, through June 1998, and did not receive the IR report until August 28, 1998. The claimant testified that she was divorced on August 26, 1998, and two days later her ex-husband tendered to her the mail that had arrived at the address where she had formerly lived. The record reflects

that the claimant disputed the IR with the Commission on October 6, 1998. By the claimant's own admission, the address to which the Commission mailed the IR was her proper mailing address on the date of mailing. Rule 102.5(a) requires that notices and written communications from the Commission to the claimant be "mailed to the last address supplied by that claimant . . . ." Under Rule 102.5(h), when a notice has been mailed by the Commission to a claimant, the claimant is deemed to have received that notice five days after the date it was mailed. With the Commission letter, dated April 15, 1998, providing the initial IR, in evidence and with no evidence that the claimant notified the Commission of a change of address, the hearing officer was sufficiently supported in finding that the claimant was deemed to have received notice of the 14% IR on April 20, 1998. Since the claimant did not dispute that IR until October 6, 1998, well beyond the 90-day period provided for doing so, the hearing officer likewise did not err in determining that the 14% IR assigned to the claimant by Dr. P has, therefore, become final under Rule 130.5(e).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge