APPEAL NO. 011154
FILED JULY 10, 2001

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 May 4, 2001. The hearing officer determined that: (1) the compensable low back injury of the respondent (claimant) does not extend to or include a herniation at L3-4 and L5-S1; and (2) the first certification of maximum medical improvement (MMI) and impairment rating (IR) did not become final because it is invalid and because claimant timely disputed it. Appellant (carrier) appealed, contending that the first certification did become final. The determination regarding extent of injury was not appealed. The file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends that the first certification signed by Dr. H on July 25, 2000, became final pursuant to the 90-day rule. It contends that the Appeals Panel should not look at the chronologically first TWCC-69 in this case, which was the unsigned TWCC-69 from Dr. H's office dated July 24, 2000. However, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)) does apply only to the chronologically first Report of Medical Evaluation (TWCC-69). *See* Texas Workers' Compensation Commission Appeal No. 981585, decided August 28, 1998. Texas Workers' Compensation Commission Appeal No. 000693, decided May 8, 2000, cited by carrier, is distinguishable and does not support carrier's contention in this regard. In that case, the Appeals Panel noted that a TWCC-69 that was first in time was not the first certification of IR because it was prepared, not as a certification of IR, but for informational purposes. A physical therapist had sent the document to the doctor who actually did sign a TWCC-69, which was intended to be a certification of IR. In the case before us, however, there is nothing to indicate that Dr. H did not intend for the July 24, 2000, TWCC-69 to be a certification of IR. Texas Workers' Compensation Commission Appeal No. 980953, decided June 25, 1998, cited by carrier is also distinguishable. In that case, there were both signed and unsigned copies of the same TWCC-69, which were all dated the same date. Therefore, there was no unsigned TWCC-69 that predated the TWCC-69 that was found to be the "first certification of MMI and IR" in that case. We conclude that the hearing officer did not err in determining that the first certification of MMI and IR was unsigned.

Carrier contends that claimant did not prove that the first certification was disputed within 90 days. Carrier asserts that the testimony of claimant's daughter was inconsistent. However, the hearing officer resolved any inconsistencies and he determined what facts were established. We conclude that the determination that claimant disputed the first certification within 90 days is not 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, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge