APPEAL NO. 011288
FILED JULY 19, 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 (CCH) was held on May 2, 2001. The hearing officer resolved the disputed issue by deciding that the finding of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. Y on December 14, 1999, should be considered final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (claimant) appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the finding of MMI and IR assigned by Dr. Y on December 14, 1999, should be considered final under Rule 130.5(e).

Dr. Y treated the claimant for his compensable injury and in a Report of Medical Evaluation (TWCC-69) dated December 14, 1999, certified that the claimant reached MMI on December 14, 1999, with a seven percent IR. It is undisputed that Dr. Y's certification was the first certification of MMI and IR. Although not an appealed issue, we note that the hearing officer correctly concluded that Rule 130.5(e), as amended effective March 13, 2000, applied to Dr. Y's certification of MMI and IR because, setting aside for the moment the question of when the claimant received written notice of Dr. Y's certification, Dr. Y's certification of MMI and IR could not have become final under the version of Rule 130.5(e) that existed prior to March 13, 2000, because the 90th day after December 14, 1999, was March 13, 2000. With regard to amended Rule 130.5, Rule 130.5(f) provides: "This rule applies to certifications of MMI and [IRs] that have not become final prior to the effective date of this rule."

The claimant contends that the hearing officer erred in determining that he received written notice from the Texas Workers' Compensation Commission (Commission) of Dr. Y's certification on December 27, 1999. In evidence is an EES-19 letter from the Commission to the claimant dated December 22, 1999, in which the Commission gave notice that Dr. Y had reported that the claimant reached MMI on December 14, 1999, with a seven percent IR. The claimant acknowledged that the EES-19 letter in evidence contains the correct address of the place where he resided from August 1999 through January 2000, but the claimant said that he never received that letter. He testified that he did not receive written notice of Dr. Y's certification of MMI and IR until September or October 2000. A Commission Dispute Resolution Information System log of December 22, 1999, which is in evidence, reflects that the EES-19 letter was mailed on December 22, 1999. The hearing officer applied the five-day deemed receipt provision of Rule 102.5(d) and found that the claimant received the EES-19 letter on December 27, 1999. It is undisputed that the claimant did not dispute Dr. Y's certification of MMI and IR until

November 1, 2000, which is over 90 days after the date the Commission sent the EES-19 letter to the claimant. The hearing officer's findings are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The claimant contends that the hearing officer erred in not applying the exceptions to finality contained in amended Rule 130.5(e), especially the provisions regarding a clear misdiagnosis and inadequate treatment. The benefit review conference (BRC) report in evidence reflects that the only basis the claimant alleged at the BRC for not making the first certification of MMI and IR final under Rule 130.5(e) was that he did not have knowledge of the IR until November 1, 2000, and that he disputed the IR at that time. The only basis the claimant alleged at the CCH for not making the first certification of MMI and IR final under Rule 130.5(e) was that he timely disputed the first certification on November 1, 2000, after having first received written notice of the certification in September or October 2000. Since the claimant did not allege at the BRC or the CCH that he was contending that any of the exceptions in amended Rule 130.5(e) were applicable, we conclude that the hearing officer did not err in not making findings of fact regarding those exceptions. The hearing officer addressed what the claimant raised at the BRC and CCH, that is, whether he timely disputed Dr. Y's certification of MMI and IR.

The claimant further contends that the evidence establishes a misdiagnosis and inadequate treatment. We do not address those matters on appeal because they were not urged at the CCH. A similar situation arose in Texas Workers' Compensation Commission Appeal No. 94518, decided June 10, 1994, wherein a hearing officer determined, with regard to the issue of whether a claimant had timely filed a claim for compensation, that the claimant had not and did not have good cause for failing to do so; and on appeal the Appeals Panel responded to that claimant's contention that the time for filing had been tolled as follows:

> Claimant asserts, for the first time on appeal, that the period for filing a claim in this case was tolled by employer's failure to file its TWCC-1 (Employer's First Report of Injury), after claimant provided it with notice of the _____, injury. The claimant did not argue the tolling provision of Section 409.008 at either the [BRC] or at the hearing, and the hearing officer made no findings in regard to whether the claim filing period had been tolled. It is well-settled that the Appeals Panel is limited to issues developed below and that we will not consider an argument raised for the first time on appeal. [Citations omitted.]

The claimant contends that the hearing officer erred in relying on information that was not in the CCH record. At the CCH, the claimant asked the hearing officer to take "notice" of how the Commission's computer system regarding change of addresses works, because he alleged that, although the EES-19 letter had the correct address on it, he had not given that address to the Commission until sometime after the date of the letter. The hearing officer stated at the CCH that she would verify information regarding how address

changes are made with someone with customer services. The parties made no objection to this procedure. In her decision, the hearing officer notes that she talked with a field office manager about the Commission's system for address changes. On appeal, the claimant complains about the hearing officer's statement in her decision that the field office manager told her that the Commission will update an address if it receives documents with a different address. Since the complained-of action was made at the claimant's request and without objection by the claimant, we conclude that the claimant has not shown reversible error.

Furthermore, we do not see how the claimant's assertion that the EES-19 letter was sent to his old address because he had not given the Commission his new address (the address where he lived from August 1999 through January 2000, which is the address on the December 22, 1999, EES-19 letter) helps his case. *See* Texas Workers' Compensation Commission Appeal No. 991846, decided November 4, 1999, wherein the Appeals Panel noted that, with regard to a claimant's assertion that he had not received a letter from a hearing officer, any problem experienced by the claimant with notices not being mailed to his current address was attributable to the failure of the claimant to keep the Commission informed of his current address, citing Rule 102.4(a).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge