

APPEAL NO. 011606
FILED SEPTEMBER 12, 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 July 11, 2001. The hearing officer resolved the disputed issue by determining that the appellant's (claimant) first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by the claimant's treating doctor on March 6, 2000, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The claimant appealed, asserting that the first certification of MMI/IR by his treating doctor should not be final pursuant to Rule 130.5(e)(2), due to a clear misdiagnosis or undiagnosed medical condition. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the first IR had become final. The claimant argues on appeal that the treating doctor misdiagnosed the rotator cuff tear of his left shoulder when certifying him at MMI/IR, and, therefore, that certification should not be final. The treating doctor in this case certified that the claimant had reached MMI as of February 29, 2000, with a five percent IR. The claimant did not dispute the IR until January 11, 2001.

The initial medical report filed by the treating doctor recorded an impression of rotator cuff disorder. Prior to issuing his IR certification, the treating doctor requested an MRI for the claimant's left shoulder on February 22, 2000, which indicated that the rotator cuff itself was of normal signal. In his narrative of February 29, the doctor indicated that the claimant's injury was a torn biceps muscle. The claimant had some limited range of motion deficits but minimal achiness.

The claimant testified that on May 16, 2000, he received written notification from the Texas Workers' Compensation Commission (Commission) that he had been placed at MMI/IR and that he immediately called to protest. However, a Dispute Resolution Information System (DRIS) note dated that day states only that the claimant called with questions about the notice and was told that he had 90 days to dispute if he did not agree. The claimant was sent a Notice of [MMI/IR] Dispute (TWCC-32); the DRIS notes do not record a second call that the claimant contended he made, asking for instructions on completing the TWCC-32.

Rule 130.5(e) in effect for this certification provides that the first certification of MMI/IR assigned to an employee is final if the certification is not disputed within 90 days after written notification is sent by the Commission to the parties; the exceptions to finalization under this rule are: a significant error in applying the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published

by the American Medical Association (Rule 130.5(e)(1)); a clear misdiagnosis or a previously undiagnosed medical condition (Rule 130.5(e)(2)); or prior improper and inadequate treatment of the injury that would render the MMI or IR invalid (Rule 130.5(e)(3)). The appellant has asserted that Rule 130.5(e)(2) precludes finality.

The hearing officer reviewed the testimony and medical evidence presented in this case, and determined that the medical records in evidence are insufficient to establish a clear misdiagnosis and not simply a worsening or increase in symptoms. The hearing officer also believed that while the claimant called to inquire about the IR, he had not timely called to convey a dispute. Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **PACIFIC INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**PARKER W. RUSH
1445 ROSS AVENUE, SUITE 4200
DALLAS, TEXAS 75202-2812.**

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge