APPEAL NO. 011974
FILED OCTOBER 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 July 24, 2001, with the record closing on July 31, 2001. He determined that the compensable injury, which the respondent (claimant) sustained on _____________, does not include an injury to the cervical spine, and that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. H on May 19, 2000, did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). Appellant (carrier) contends that the hearing officer's determination relating to Rule 130.5(e) is against the great weight and preponderance of the evidence. Carrier also challenged other findings of fact and asserted that they are against the great weight and preponderance of the evidence. The parties did not appeal the determination regarding extent of injury. The appeals file contains no response from claimant.

DECISION

We affirm.

The evidence reflects that claimant sustained a compensable left shoulder injury on ______________. On May 17, 2000, Dr. H diagnosed claimant with a shoulder strain and shortly thereafter he certified that claimant had a zero percent IR. The first certification of MMI and IR was rendered by Dr. H on May 19, 2000. He certified that claimant reached MMI on May 15, 2000, with a zero percent IR. Claimant's treating doctor at the time of Dr. H's certification, Dr. E, initially disagreed with Dr. H's certification; however, on June 1, 2000, Dr. E certified that claimant had reached MMI on May 30, 2000, with a zero percent IR. In April 2000, Dr. E had diagnosed claimant with a cervical and trapezius strain and an upper back strain. An MRI report from June 2000, after the first certification, stated that claimant had abnormal increased signal intensity within the left AC joint and in the distal clavicle "likely related to recent trauma" and mild increased signal intensity in the subacromial and subdeltoid bursa, suggestive of bursitis.

Subsequent to Dr. H's certification, claimant continued to have problems with her shoulder and sought a change of treating doctor. She was examined by Dr. B and was diagnosed with left shoulder AC arthritis and impingement syndrome. On June 27, 2001, Dr. B performed an arthroscopic subacromial decompression and distal clavicle excision on claimant's shoulder. The post-operative diagnosis was a partial thickness bursal-sided rotator cuff tear, impingement syndrome, and acromioclavicular arthritis. The medical records do not show that these conditions had been diagnosed at the time of Dr. H's MMI and IR certification. In a July 19, 2001, report, Dr. B stated that claimant was doing well following her arthroscopic surgery, that her symptoms had improved, and that he did not think she had actually reached MMI on May 19, 2000, "because her diagnosis at that time was not accurate."

Carrier contends the hearing officer erred in determining that claimant sustained a partial rotator cuff tear and damage to her acromioclavicular joint in her left shoulder as a result of her fall on ____________. Carrier also contends the hearing officer erred in determining that the damage to the acromioclavicular joint resulted in the development of acromioclavicular arthritis and impingement syndrome in the left shoulder. The testimony of claimant regarding her fall onto her shoulder and the medical records from Dr. B showing her diagnoses support the hearing officer's determinations in this regard.

Carrier next contends the hearing officer erred in determining that the first certification of MMI and IR did not become final. It appears that the hearing officer determined the first certification did not become final because, prior to that first certification, claimant's doctors had failed to diagnose the partial rotator cuff tear, the hematoma in the acromioclavicular joint, the acromioclavicular arthritis, and the impingement syndrome. The Texas Workers' Compensation Commission promulgated a revised Rule 130.5(e), which includes exceptions to the finality when an IR certification is not disputed within 90 days. The effective date of the new rule is March 13, 2000, and applies to certifications of IR that became final after the effective date. The "new" Rule 130.5(e) states:

> (e) The first certification of MMI and [IR] assigned to an employee is final if the certification of MMI and/or the [IR] is not disputed within 90 days after written notification of the MMI and IR is sent by the Commission to the parties, as evidenced by the date of the letter, unless based on compelling medical evidence the certification is invalid because of:
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> (1) a significant error on the part of the certifying doctor in applying the appropriate AMA Guides [Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association] and/or calculating the [IR];
>
> (2) a clear mis-diagnosis or a previously undiagnosed medical condition; or
>
> (3) prior improper or inadequate treatment of the injury which would render the certification of MMI or [IR] invalid.
>
> (f) This rule applies to certifications of MMI and [IRs] that have not become final prior to the effective date of this rule.

Dr. H's zero percent IR was certified on May 19, 2000, and the revised version of Rule 130.5(e) applies in the present case. The hearing officer apparently determined that the first certification of MMI and IR did not become final under Rule 130.5(e) because there was a clear misdiagnosis of claimant's condition. Given the medical evidence of claimant's diagnoses before and after the first certification, we conclude that the hearing officer's

determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. The hearing officer could find that there was a clear misdiagnosis in this case.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

____
Judy L. S. Barnes
Appeals Judge

CONCUR:

____
Thomas A. Knapp
Appeals Judge

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Michael B. McShane
Appeals Judge