APPEAL NO. 012139
FILED OCTOBER 11, 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 July 30, 2001. The hearing officer determined that the first certification of the date of maximum medical improvement (MMI) of March 14, 2000[1], with an IR of 10%, assigned to the appellant (claimant) by Dr. B, on a TWCC-69 dated March 17, 2000, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The claimant has appealed this determination, arguing that the first IR did not include all of her compensable injury. The respondent (carrier) requests that the hearing officer's decision be affirmed. Prior to the hearing, the parties stipulated that the compensable injury of _____, did not include an injury to the low back.

DECISION

Affirmed.

The treating doctor in this case referred the claimant to Dr. B, who certified the date of MMI as March 14, 2000, and certified an IR of 10% on a TWCC-69, which was signed by the treating physician acknowledging that he agreed with the assessment. There is no dispute that this was the first certification of MMI and IR. This case involves the application of Rule 130.5(e), which provides:

> (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 [Texas Workers' Compensation] Commission to the parties, as evidenced by the date of the letter, unless based on compelling medical evidence the certification is invalid because of:
>
> (1) a significant error on the part of the certifying doctor in applying the appropriate [Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association] AMA Guides and/or calculating the [IR];
>
> (2) a clear mis-diagnosis or a previously undiagnosed medical condition; or

[1]We note that the hearing officer refers to the first certification of MMI and impairment rating (IR) "assigned" by Dr. B March 17, 2000. The actual certification date of MMI and IR was March 14, 2000, and the Report of Medical Evaluation (TWCC-69) was signed on March 17, 2000.

(3) prior improper or inadequate treatment of the injury which would render the certification of MMI or [IR] invalid.

In Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 548 (Tex. 1999), the Texas Supreme Court held that there were no exceptions to finality of a certification of MMI or IR that was not disputed within 90 days. Rule 130.5(e) was amended by the Commission after the decision in Rodriguez, with an effective date of March 13, 2000, to provide the exceptions to finality which are listed above. The amended Rule 130.5(e) applies to these proceedings.

Testimony and evidence presented at the CCH showed the hearing officer that the claimant and the treating doctor knew that the claimant had neurocognitive problems as a result of her injury and that those problems were diagnosed prior to the claimant's first certification. The hearing officer determined that the Commission sent notice of Dr. B's certification of MMI and IR to the claimant on March 27, 2000, and that the claimant was deemed to have received the notice five days after it was sent, on April 3, 2000[2]. Neither the claimant nor the treating doctor, on behalf of the claimant, disputed the certification within 90 days, despite their knowledge that the claimant had been diagnosed with neurocognitive problems prior to the date of MMI. Carrier's Exhibit No. 11 contains a letter from the Commission which specifically advised the claimant of the need to dispute the certification of MMI or IR within 90 days after receiving notice of MMI or IR. There was evidence from which the hearing officer could find that the claimant and the treating doctor were well aware that the IR did not include all compensable body parts not later than April 3, 2000, well within the 90-day period for making a timely dispute of the IR. The claimant was required to dispute timely that rating to preclude it from becoming final under the provisions of Rule 130.5(e). The hearing officer did not find any of the exceptions to Rule 130.5(e) to apply, and that determination is supported by the evidence.

We are satisfied that the evidence is sufficiently supportive of the appealed findings of fact and that those findings sufficiently support the conclusions of law. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

[2]Rule 102.5(d) deems receipt of a notice from the Commission five days after it is mailed. Pursuant to this rule, the claimant was deemed to have received the March 27, 2000, notice from the Commission informing her of Dr. B's certification on Monday, April 3, 2000. Rule 102.3(a)(3) states that if the last day of any period is not a working day, the period is extended to include the next day that is a working day.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
COMMODORE 1
AUSTIN, TEXAS 78701.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge