APPEAL NO. 012280
FILED NOVEMBER 7, 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 August 30, 2001. With respect to the single issue before her, the hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) became final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). In his appeal, the claimant essentially argues that the hearing officer erred in determining that the first certification of MMI and IR became final. He also asserts error in the hearing officer's denial of his Motion for a Continuance. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the first certification of MMI and IR became final pursuant to Rule 130.5(e). The claimant acknowledged at the hearing that he did not dispute the first certification of MMI and IR within the 90-day period prescribed for doing so in Rule 130.5(e). The hearing officer correctly determined that none of the exceptions to finality contained in amended Rule 130.5(e) applied in this instance, and indeed the claimant did not argue that one of the exceptions applied. Rather, the claimant challenged the Texas Workers' Compensation Commission's (Commission) authority to have enacted Rule 130.5(e), citing Fulton v. Associated Indem. Corp., 46 S.W.3d 364 (Tex.App.-Austin 2001), pet. filed May 22, 2001. On April 23, 2001, the Acting Executive Director of the Texas Workers' Compensation Commission (Commission) issued Advisory 2001-05, which states that the Fulton decision "should not be considered as precedent at least until it becomes final upon completion of the judicial process" and that amended Rule 130.5(e) "remains in effect." In that the judicial process in the Fulton case has not been completed, we are following the Commission's Advisory 2001-05.

The claimant also asserts that the hearing officer erred in denying his Motion for a Continuance. The claimant essentially asked that the hearing of the 90-day Rule issue be deferred until the Supreme Court issues its decision in Fulton. The hearing officer denied the motion because the claimant had not filed it until the morning of the hearing. We cannot agree that the hearing officer abused her discretion in denying the motion. As Advisory 2001-05 states, the Commission has decided to proceed with Rule 130.5(e) remaining in effect pending the final resolution of the Fulton decision. In so doing, the Commission clearly envisioned that either party who could benefit from the enforcement of Rule 130.5(e) was permitted to do so at the Commission level.

The hearing officer's decision and order are affirmed.

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

RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Michael B. McShane
Appeals Judge