

APPEAL NO. 012594
FILED DECEMBER 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 September 20, 2001. [The hearing officer] determined that the initial certification of maximum medical improvement (MMI) and impairment rating (IR) assigned to the appellant (claimant) has become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). On appeal, the claimant expresses disagreement with this decision and urges that because her condition worsened subsequent to the initial MMI/IR certification, it should not be adopted. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The first IR assigned to an employee is considered final if the rating is not disputed within 90 days after the rating is assigned. Rule 130.5(e). The version of Rule 130.5(e) in existence in March 1998, when the claimant received written notification of the initial certification, applies in this case. The claimant does not appeal the hearing officer's finding that she did not dispute the first certification of IR, but argues that, because her condition has worsened, it is not fair that this certification has become final.

In accordance with Rodriguez v. Service Lloyds Ins. Co., 997 S.W.2d. 248 (Tex. 1999), there are no exceptions to the 90-day rule. In Rodriguez, the majority clearly stated that the Appeals Panel had exceeded its authority in finding exceptions to Rule 130.5(e) and that, absent a timely dispute, an IR becomes final. Based upon the clear language of the Rodriguez decision, the Appeals Panel recognized that there was not an exception to the 90-day rule due to misdiagnosis or egregious error.

In the wake of Rodriguez, the Texas Workers' Compensation Commission promulgated a revised Rule 130.5, which includes exceptions to the finality when an IR certification is not disputed within 90 days. However, the effective date of the new rule is March 13, 2000, and, in its terms, it does not apply to certifications of IR that became final prior to its effective date. See Rule 130.5(f). As interpreted by the majority in Rodriguez, this rule has made the initial certification of MMI and IR final and rendered us powerless to hold otherwise.

The decision and order of the hearing officer are affirmed.

The true corporate name of the carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge