APPEAL NO. 013048
FILED FEBRUARY 5, 2002

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 November 13, 2001. The hearing officer determined that the respondent's (claimant) first certification of maximum medical improvement (MMI) and impairment rating (IR) did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (carrier) urges on appeal that this determination is incorrect. The appeal file contains no response from the claimant.

DECISION

Affirmed.

The carrier contends that the hearing officer erred in determining that the first certification of MMI and IR did not become final under Rule 130.5(e). The evidence reflects that on October 31, 1997, the claimant's treating doctor certified that she reached MMI on October 29, 1997, with a zero percent IR. The claimant testified that she did not receive a copy of the certification, nor was she aware that it had been completed. There is no indication that a copy of this certification was received by the Texas Workers' Compensation Commission, either by the certifying doctor or the carrier, at or near the time it was prepared. The evidence reflects that the claimant first received written notice of the MMI certification in August 2000, and filed a dispute within 90 days thereafter.

The carrier asserts that it sent a copy of the certification to the claimant, via certified mail, on November 17, 1997, but the letter was returned because it was not claimed. The carrier argues that the claimant should not benefit from her refusal to accept the letter from the carrier, which allegedly contained the notice of MMI certification. The hearing officer noted that although the carrier admitted into evidence a copy of a certified mail envelope postmarked November 17, 1997, addressed to the claimant and marked "unclaimed," the contents of the envelope were not established. The hearing officer determined that the first certification of MMI did not become final because the claimant first received written notice of the certification on August 11, 2000, and thereafter timely filed a dispute.

Whether and when the claimant received written notice was a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93729, decided September 29, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Nothing in our review of the record indicates that the hearing officer's determination that the first MMI certification did not become final is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing are affirmed.

The true corporate name of the carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier,** and the name and address of its registered agent for service of process is

MARVIN KELLY, EXECUTIVE DIRECTOR
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Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge