APPEAL NO. 013201-s
FILED FEBRUARY 21, 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 December 11, 2001. The hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. F became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (claimant) has appealed the decision, asserting that the first IR was not fair and that he was not aware of Rule 130.5(e). The respondent (carrier) urges affirmance.

DECISION

Reversed and rendered.

The version of Rule 130.5(e) that was in effect at the time of the claimant's first certification of MMI/IR provided that the first IR assigned to an injured worker was considered final if not disputed within 90 days after the rating was assigned. The claimant in this case did not dispute an IR rendered by Dr. F within 90 days after receiving written notice of it.

However, this version of Rule 130.5(e) was considered and determined to be invalid by the Third Court of Appeals in Fulton v. Associated Indemnity Corporation, 46 S.W.3d 364 (Tex. App.-Austin 2001, pet. denied) (Fulton). The court stated that an agency could not impose restrictions on an employee's rights that are not found in the plain language of the statute. Noting that the 1989 Act provided for up to a two-year period (104 weeks) for an injured employee to reach MMI, the court found that Rule 130.5(e) was arbitrary and invalid because it impermissibly shortened this time. Because the Texas Workers' Compensation Commission had exceeded its authority by promulgating a rule which implicitly finalized MMIs if undisputed in 90 days, the court held that the first MMI certification and IR applied to Fulton did not become final. The court relied in large part on the Texas Supreme Court's discussion about the 104-week MMI period in the case of Texas Workers' Compensation Commission v. Garcia, 893 S.W.2d 504 (Tex. 1995).

Applying the Fulton decision, we reverse and render a decision in this case that the claimant's first MMI certification and IR as certified by Dr. F did not become final.

The true corporate name of the insurance 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
T.P.C.I.G.A.
9120 BURNET ROAD
AUSTIN, TEXAS 78758.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Michael B. McShane
Appeals Judge

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Edward Vilano
Appeals Judge