

APPEAL NO. 020214
FILED MARCH 7, 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 January 2, 2002. The hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. C 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 had not become final. The respondent (self-insured) replies, urging affirmance.

DECISION

Reversed and rendered.

On _____, the claimant sustained a compensable injury. Dr. C, the carrier-selected required medical examination doctor, examined the claimant on January 26, 2001, and certified that the claimant reached MMI on that date and assigned the claimant a six percent IR. With regard to the disputed issue, the hearing officer determined that this first certification of MMI and IR became final under Rule 130.5(e), based on the hearing officer's determination that the claimant did not dispute the first certification of MMI and IR within 90 days after written notification of the MMI and IR certification was sent by the Texas Workers' Compensation Commission (Commission) to the claimant.

We had occasion to discuss the effect of a recent Texas appeals court decision on Rule 130.5(e) in Texas Workers' Compensation Commission Appeal No. 020014-s, decided February 26, 2002. We first quoted the original Rule 130.5(e), then we quoted the amended version of Rule 130.5(e), effective March 13, 2000, and finally noted that this rule was repealed effective January 2, 2002. We then said:

In Fulton v. Associated Indemnity Corporation, 46 S.W.3d 364 (Tex. App.-Austin 2001, pet. denied), the court determined that the original version of Rule 130.5(e), the 90-day rule, which restricted the time period for disputing an IR, implicitly limited a claimant's time period for revisiting the assessment of MMI, because when the IR became final, so did the determination of MMI. With respect to the original version of Rule 130.5(e), the court held that: (1) because Rule 130.5(e) severely restricts the statutory time period for assessing a final MMI, the Commission exceeded its authority in enacting the rule; (2) the rule is arbitrary and invalid because it impermissibly shortens the statutory time period allotted to an injured worker to achieve MMI; (3) Section 401.011(30) establishes a 104-week deadline for a worker to achieve MMI, and the Commission may not, by rule, shorten this statutory period because to do so would impose restrictions in excess of those imposed by the 1989 Act; (4) Rule 130.5(e) is invalid to the extent it prevents a reassessment of MMI because the IR or MMI was not disputed within 90 days; and (5) Rule

130.5(e) imposed on Fulton a restriction in excess of that found in the plain language of the 1989 Act and that Fulton's MMI certification, and therefore, his IR, did not become final.

The amended Rule 130.5(e) is the version of Rule 130.5(e) that is applicable to the case under consideration. As noted in footnote 9 on page 371 of the Fulton decision, the original Rule 130.5(e) *implicitly* limited MMI disputes whereas the amended Rule 130.5(e) *explicitly* limits the time for disputing MMI certification as well as IRs. In our opinion, the reasons stated in the Fulton decision for holding the original Rule 130.5(e) invalid also apply to the amended Rule 130.5(e).

Applying the Fulton decision and our rationale in Appeal No. 020014-s, we reverse the hearing officer's decision that the first certification of MMI and IR assigned by Dr. C on January 26, 2001, became final under Rule 130.5(e), and render a decision in this case that the claimant's first MMI certification and IR as certified by Dr. C did not become final.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Philip F. O'Neill
Appeals Judge