

APPEAL NO. 021823
FILED SEPTEMBER 3, 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 June 18, 2002. The hearing officer determined that the first certification of maximum medical improvement (MMI) on July 17, 2000, did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)); that the _____, compensable injury did not extend to and include an aggravation of the lumbar disc herniations and degenerative disc disease; and that the respondent (claimant) has disability from the compensable injury from _____, until November 30, 2000, when she took retirement. The appellant (carrier) appeals the MMI and disability determinations and the claimant responds, urging affirmance.

DECISION

Affirmed in part, reversed and rendered in part.

The hearing officer did not err in his determination that the first certification of MMI on July 17, 2000, did not become final under Rule 130.5(e). 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). See Texas Workers' Compensation Commission Appeal No. 013201-s, decided February 21, 2001. Accordingly, that portion of the hearing officer's decision and order is affirmed.

We reverse the hearing officer's determination regarding disability and render a new decision that the claimant did not have disability. The hearing officer determined that because the claimant's injury of _____, caused her to be "unable to obtain and retain employment at wages she earned before _____, from that date until she took retirement on November 30, 2000, she has disability and is entitled to TIBs [temporary income benefits] for such period." However, the claimant testified that although she had work restrictions and only worked four hours a day, she was paid her full wages after her injury until she took her retirement on November 30, 2000.

The Appeals Panel has stated it is error to include in a period of disability those periods of time when an employee is working for wages equivalent to the preinjury average weekly wage. Texas Workers' Compensation Commission Appeal No. 020203, decided March 6, 2002; and Texas Workers' Compensation Commission Appeal No. 021773, decided August 13, 2002.

The determination of the hearing officer that the claimant has disability as a result of the injury is not supported by sufficient evidence because the claimant admitted that the employer continued paying her full salary after the injury until the date that she retired. The hearing officer's determination that the claimant has disability is against the

great weight and preponderance of the evidence so as to be manifestly unjust. Accordingly, we affirm the hearing officer's determination that the claimant's first certification of MMI had not become final and reverse and render a new decision and order that the claimant has not had disability from her compensable injury.

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

**TIMOTHY J. MCGUIRE
633 NORTH STATE HIGHWAY 61, SUITE 200
IRVING, TEXAS 75038.**

Roy L. Warren
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge