

APPEAL NO. 041932
FILED SEPTEMBER 29, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 13, 2004. The hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) certified by Dr. J did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12). The appellant (carrier) appealed this determination on sufficiency of the evidence grounds and asserted that the respondent (claimant) had actual knowledge of the first MMI and IR certification. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The carrier contends that the claimant had "actual knowledge" of the first MMI/IR certification therefore, the first certification became final under Rule 130.12. The carrier cites several Appeals Panel decisions that state "where actual knowledge exists other notification is not required."

Rule 130.12(b) provides in pertinent part:

A first MMI/IR certification must be disputed within 90 days of delivery of written notice through verifiable means, including IRs related to [extent of injury] disputes. . . . The 90-day period begins on the day after the written notice is delivered to the party wishing to dispute a certification of MMI or an IR assignment, or both.

Texas Workers' Compensation Commission Appeal No. 041985-s, decided on September 29, 2004, cited the preamble to Rule 130.12 which noted that written notice is verifiable when it is provided from any source in a manner that reasonably confirms delivery to the party. The preamble states that this may include acknowledged receipt by the injured employee or insurance carrier, a statement of personal delivery, confirmed delivery by email, confirmed delivery by facsimile, or some other confirmed delivery to the home or business address. In the instant case, the claimant testified that she did not receive written notification of the first MMI/IR certification. In Texas Workers' Compensation Commission Appeal No. 041241-s, decided on July 19, 2004, we held that where there is no verifiable evidence to establish when the employee received the MMI/IR notification, the hearing officer may rely on the testimony of the claimant to determine the date the notice was provided/delivered. In the instant case, the hearing officer determined that "[t]here is no evidence that the Claimant ever received written notice, as defined and required by Rule 130.12, of the first certification of [MMI] and [IR] by [Dr. J], M.D. dated November 3, 2003."

We have reviewed the complained-of determination and conclude that the hearing officer did not err in determining that the first certification of MMI and IR did not become final under Rule 130.12. Nothing in our review of the record reveals that the hearing officer's determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **NATIONAL FIRE INSURANCE COMPANY OF HARTFORD** 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.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge