

APPEAL NO. 132383  
FILED DECEMBER 18, 2013

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 September 5, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from [Dr. B] on December 14, 2012, did not become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (2) the respondent (claimant) reached MMI on March 27, 2013; (3) the claimant's IR is five percent; and (4) the claimant had disability for the period beginning December 14, 2012, and continuing through March 7, 2013, but not thereafter through March 27, 2013.

The appellant (carrier) appealed all of the hearing officer's determinations. The carrier specifically argues that Dr. B's MMI/IR certification became final under Section 408.123 and Rule 130.12 because the carrier contends that the lack of an attached narrative report to a Report of Medical Evaluation (DWC-69) does not render the MMI/IR certification invalid for 90-day finality purposes. The appeal file does not contain a response from the claimant.

**DECISION**

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], and that the first MMI/IR certification was by Dr. B, the treating doctor, on December 14, 2012. The claimant testified he was injured in a single car motor vehicle accident. No specific exception to finality under Section 408.123(f) was litigated at the CCH.

**DISABILITY**

The hearing officer's determination that the claimant had disability for the period beginning December 14, 2012, and continuing through March 7, 2013, but not thereafter through March 27, 2013, is supported by sufficient evidence and is affirmed.

**FINALITY, MMI, AND IR**

Section 408.123(e) provides that except as otherwise provided by this section, an employee's first valid certification of MMI and the first valid assignment of an IR is final if the certification or assignment is not disputed before the 91st day after the date written

notification of the certification or assignment is provided to the employee and the carrier by verifiable means. Rule 130.12(b) provides, in part, that the first MMI/IR certification must be disputed within 90 days of delivery of written notice through verifiable means and that the notice must contain a copy of a valid DWC-69, as described in Rule 130.12(c). Rule 130.12(c) provides, in part, that a certification of MMI and/or IR assigned as described in subsection (a) must be on a DWC-69. The certification on the DWC-69 is valid if: (1) there is an MMI date that is not prospective; (2) there is an impairment determination of either no impairment or a percentage IR assigned; and (3) there is the signature of the certifying doctor who is authorized by the Texas Department of Insurance, Division of Workers' Compensation (Division) under Rule 130.1(a) to make the assigned impairment determination.

The hearing officer determined that the first MMI/IR certification from Dr. B on December 14, 2012, did not become final under Section 408.123 and Rule 130.12, and also determined that the claimant reached MMI on March 27, 2013, with a five percent IR per [Dr. Y], the designated doctor appointed by the Division on the issues of MMI and IR. The hearing officer stated the following in the Background Information section of his decision:

There was no narrative report attached to [Dr. B's] DWC-69 to comply with Rule 130.1(d)(1)(B). Accordingly [Dr. B's] certification of [MMI] with no impairment cannot serve as the basis for finality under the 90-day rule. [Appeals Panel Decision (APD) 050747-s, decided May 18, 2005].

The Appeals Panel has held that "initially, a hearing officer should determine whether there is a first valid certification of MMI/IR before determining whether that first valid certification of MMI/IR has or has not become final." See *generally* APD 061569-s, decided October 2, 2006. A finality determination is contingent on there being a first "valid" certification of MMI and first "valid" assignment of IR as provided in Section 408.123 and Rule 130.12. As previously stated, Rule 130.12(c) provides that the certification on the DWC-69 is valid if: (1) there is an MMI date that is not prospective; (2) there is an impairment determination of either no impairment or a percentage [IR] assigned; and (3) there is the signature of the certifying doctor who is authorized by the Division under Rule 130.1(a) to make the assigned impairment determination. See *also* APD 100636-s, decided July 16, 2010. In the case on appeal, the hearing officer determined that Dr. B's December 14, 2012, MMI/IR certification is valid pursuant to Rule 130.12; however, he determined it did not become final pursuant to Section 408.123 because a narrative report was not attached to the DWC-69.

The hearing officer cites to APD 050747-s, *supra*, to support his finality determination. In that case the carrier received only a narrative report and did not

receive a DWC-69. The Appeals Panel stated that the focus in the case is whether the receipt of a narrative report was sufficient to begin the 90-day clock of Section 408.123 and Rule 130.12. The Appeals Panel held that where the rule states that the MMI and/or IR assigned “must be on a Form [DWC-69]” other means of communication of the MMI/IR, such as a narrative report without a DWC-69, are insufficient to begin the 90-day dispute period of Section 408.123 and Rule 130.12. We note that APD 050747-s does not stand for the proposition that a MMI/IR certification on a DWC-69 without a narrative report attached to it is insufficient to begin the 90-day period of Section 408.123 and Rule 130.12.

We note that APD 100483, decided June 9, 2010, directly addresses whether or not a narrative report is required for 90-day finality purposes. In that case the carrier received only a DWC-69 and did not receive a narrative report. The hearing officer noted there was no narrative report included with the DWC-69, and found that the certifying doctor’s MMI/IR certification was invalid. The Appeals Panel noted that “Rule 130.12(c) does not require a narrative report to be a valid certification.” The Appeals Panel stated that the MMI/IR certification in question did not contain a prospective date of MMI, the DWC-69 was signed, and a percentage IR was assigned. Given that the MMI/IR certification met the requirements of Rule 130.12(c) as a valid certification, the Appeals Panel reversed the hearing officer’s determination that the assigned IR was not a valid rating as against the great weight as to be clearly wrong and manifestly unjust. The Appeals Panel reversed the hearing officer’s finality determination that the MMI/IR certification did not become final under Section 408.123, and rendered a new decision that the MMI/IR certification did become final under Section 408.123.

In the case on appeal the hearing officer held that the first MMI/IR certification by Dr. B on December 14, 2012, did not become final because there was no narrative attached to his DWC-69. However, as discussed above in APD 100483, *supra*, Rule 130.12(c) does not require a narrative report to be a valid certification. Dr. B’s December 14, 2012, DWC-69 is a valid certification of MMI/IR pursuant to Rule 130.12(c) because it does not contain a prospective date of MMI, the DWC-69 is signed by Dr. B, and Dr. B certified that the claimant does not have any permanent impairment as a result of the compensable injury. Dr. B’s December 14, 2012, MMI/IR certification meets the requirements of Rule 130.12(c) and is a valid certification. We therefore reverse the hearing officer’s determination that the first MMI/IR certification by Dr. B on December 14, 2012, did not become final under Section 408.123 and Rule 130.12, and we render a new decision that the first MMI/IR certification by Dr. B on December 14, 2012, did become final under Section 408.123 and Rule 130.12.

Because we have reversed the hearing officer’s finality determination, we also reverse the hearing officer’s determination that the claimant reached MMI on March 27,

2013, with a five percent IR per Dr. Y, and we render a new decision that the claimant reached MMI on December 14, 2012, with no permanent impairment.

### **SUMMARY**

We affirm the hearing officer's determination that the claimant had disability for the period beginning December 14, 2012, and continuing through March 7, 2013, but not thereafter through March 27, 2013.

We reverse the hearing officer's determination that the first MMI/IR certification from Dr. B on December 14, 2012, did not become final under Section 408.123 and Rule 130.12, and we render a new decision that the first MMI/IR certification from Dr. B on December 14, 2012, did become final under Section 408.123 and Rule 130.12.

We reverse the hearing officer's determinations that the claimant reached MMI on March 27, 2013, with a five percent IR, and we render a new decision that the claimant reached MMI on December 14, 2012, with no permanent impairment.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3232.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge