APPEAL NO. 950431

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held in (city), Texas, on February 10, 1995, to determine the issue of whether the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by (Dr. W) became final under Rule 130.5(e) (Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e)). The hearing officer, (hearing officer), held that that MMI certification and IR did not become final, and the carrier takes this appeal, pointing to the uncertainty of claimant's recollection and the fact that claimant became aware of Dr. W's MMI and IR in April 1994 but did not dispute it. The appeals file does not contain a response from the claimant.

DECISION

We affirm.

According to the limited evidence in the record, the claimant suffered a compensable injury on (date of injury). He stated that Dr. W was his treating doctor. The evidence included a Report of Medical Evaluation (TWCC-69) dated March 3, 1994, in which Dr. W certified MMI as of that date with an IR of 13%. That TWCC-69 does not contain Dr. W's signature; rather, his name is typed at the bottom of the form. Also in evidence was a March 14, 1994, TWCC-69, this one bearing Dr. W's stamped signature, which certifies MMI as of March 8, 1994, with a 13% IR. In addition, a TWCC-69 signed by (Dr. T) of the (center), dated March 14, 1994, certifies MMI on March 8, 1994, with a 13% IR.

Dr. W's first TWCC-69 is date stamped as received by the Texas Workers' Compensation Commission (Commission) on March 8, 1994; his second TWCC-69 is date stamped as received on March 25, 1994.

On March 24th the Commission wrote the claimant to say that it had received Dr. W's report certifying MMI and assigning a 13% IR. The letter concludes, "Your certification of [MMI] and [IR] may be considered final if not disputed by May 31, 1994. If you do not agree . . . you should immediately tell the insurance carrier and the Commission Field Office." When shown this letter the claimant said he did not know whether he received it, but acknowledged that the address was correct. He also said several times during the hearing that he "got so many papers" since his injury. The claimant also testified that Dr. W "told me he gave me 13 but I kept asking and wouldn't nobody ever tell me nothing about the 13 percent." He also said that he first found out "when they sent me the paper from" the center which he said was the first IR he received. Earlier, however, he stated that he believed he got both TWCC-69s in March. It was thus clear from claimant's testimony that he did not remember with precision which items he received or when, although he was certain that his benefit checks stopped in April.

On September 14, 1994, claimant's attorney wrote the Commission to state he was disputing the MMI date and IR given by Dr. W, and requesting that a designated doctor be

appointed. A September 21st reply letter stated that the Commission had received Dr. W's IR on March 8, 1994, and that therefore the 90 days to dispute had elapsed.

The hearing officer determined that Dr. W's initial certification that the claimant reached MMI with a 13% IR was unsigned, and therefore was invalid and did not become final. (She further found that since there was no designated doctor, whether the claimant has reached MMI is premature and that claimant had not reached MMI as of the date of the hearing.) In its appeal the carrier notes that claimant's was unsure as to which TWCC-69s or other notices he received and when he received them, but that the most reasonable inference was that in early April 1994 the claimant was aware that his doctor had certified MMI with a 13% IR. From the evidence, it argues, the hearing officer should have concluded that the claimant had actual knowledge of the certification and IR no later than early April 1994. That Dr. W's first TWCC-69 is unsigned, the carrier argues, is immaterial in that it does not render the report invalid but rather raises an error which the claimant had 90 days to point out.

Although we have held that the 90-day period does not begin to run until a claimant becomes aware of an MMI certification or IR, as opposed to the date on which the doctor merely issues the report (*see* Texas Workers' Compensation Commission Appeal No. 92542, decided November 30, 1992), this holding has been refined to provide that the certification of MMI and IR and the communication to the parties for purposes of the rule requires a writing. Texas Workers' Compensation Commission Appeal No. 94354, decided May 10, 1994. We also have held that Rule 130.5(e) applies only to the chronologically first written certification of MMI or IR. Texas Workers' Compensation Commission Appeal No. 941137, decided October 10, 1994. Despite uncertainty on the part of the claimant in recalling events of the past, we hold that the evidence sufficiently supports the hearing officer's findings that Dr. W's original TWCC-69 was the initial certification of MMI and IR.

However, a claimant's receipt of written notice of the first IR assigned by a doctor becomes moot in light of the fact that the report was not signed by the doctor. As we stated in Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992, "[T]he absence of the signature of a doctor purporting to `certify' that an employee had reached MMI [results] is an insufficiency of the evidence to support a determination that MMI had indeed been `certified' as required by [applicable rules]." And in Texas Workers' Compensation Commission Appeal No. 94931, decided August 24, 1994, a case involving the 90-day rule, we affirmed the hearing officer's determination that the report of the first doctor certifying MMI and IR was invalid, based upon the doctor's failure to sign the report. Based upon our prior holdings, we find no error in the hearing officer's determination that Dr. W's report was invalid and thus did not become final. Neither do we find error in the hearing officer's determining that the issues of MMI and IR are not ripe for adjudication; we note that the limited record does not indicate whether the claimant has reached MMI statutorily.

The decision and order of the hearing officer are affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge