

APPEAL NO. 980219
FILED MARCH 23, 1998

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 August 28, 1997, with hearing officer. The hearing officer's decision was affirmed on issues of extent of injury and whether the untimely contest of compensability was based upon newly discovered evidence, but the case was remanded in Texas Workers' Compensation Commission Appeal No. 972021, decided November 19, 1997, on the issue of finality of the first certification of maximum medical improvement (MMI) and impairment rating (IR) and the issues of whether MMI has been reached and, if so, the IR. A hearing on remand was held on January 6, 1997, on these latter issues and the hearing officer determined that the first certification of MMI and IR issued by the treating doctor on December 18, 1996, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)), and that the MMI date was December 16, 1996, with a two percent IR as stated in the first certification. The appellant (claimant) appeals several findings of fact, urges that a designated doctor states there may be other problems undiagnosed at the time of the first certification, and contends that the insurance company did not dispute the appointment of the designated doctor until the report was issued. The respondent (carrier) urges the evidence did not establish a new, previously undiagnosed medical condition or improper treatment or other significant error which would invalidate the first certification and that no basis was shown for the application of estoppel to the carrier's assertion of finality of the first certification.

DECISION

Affirmed.

No additional evidence was introduced by the parties at the hearing on remand and since the pertinent facts and circumstances surrounding the issues on appeal were set forth in our previous decision, they will not be repeated here. Appeal 972021, *supra*. The hearing officer in his original decision concluded that as a matter of law the first certification did not become final because there was an element of estoppel because the carrier allowed the dispute to proceed to the appointment of the designated doctor and only much later raised a 90-day issue. Our concern as stated in the remand was whether a proper standard had been applied by the hearing officer in his application of estoppel (an equitable doctrine) "as a matter of law" when there was no evidence or finding of the claimant's deprivation of any entitlement or detrimental reliance on any action or inaction on the part of the carrier or any advantage gained by the carrier. Also, unappealed in the original decision was the finding of fact that the claimant did not timely dispute the first certification of MMI and IR. As indicated, no new evidence was presented by the parties at the hearing on remand.

Following reconsideration of the issues as provided in the remand, the hearing officer determined that the first certification by (Dr. B), the treating doctor, rendered on December 18, 1996, with an MMI date of December 18, 1996 and an IR of two percent, became final under Rule 130.5(e). The hearing officer also found that Dr. B rated the claimant's entire compensable injury and that there was "no compelling medical evidence of a new, previously undiagnosed medical condition, or some significant error, or prior improper or inadequate treatment . . . which would invalidate the first certification." We have again reviewed the evidence and do not find the hearing officer's findings to be so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, our standard of review on evidentiary sufficiency issues.

Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 92083, April 16, 1992. Correcting the apparent erroneous application of estoppel as a matter of law because the carrier allowed the dispute to proceed to the appointment of the designated doctor, and not finding any equitable basis to invoke the doctrine of estoppel under the particular facts of this case, the requirements of the remand have been effected. Appeal 972021, *supra*. Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Christopher L. Rhodes
Appeals Judge