

APPEAL NO. 041985-s
FILED SEPTEMBER 28, 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 was held on July 13, 2004. The hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) from Dr. J on August 12, 2003, did not become final under Section 408.123. Appellant (carrier) appealed this determination on sufficiency grounds. Respondent (claimant) responded, urging affirmance.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that the first certification of MMI and IR from Dr. J did not become final. We disagree. We have discussed the application of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12) and Section 408.123 in Texas Workers' Compensation Commission Appeal No. 041241-s, decided July 19, 2004.¹ In that case, we noted that an employee's first valid certification of MMI and first valid assignment of IR is final if not disputed within 90 days after the date that written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. The preamble to the rule states that written notice is verifiable when it is provided from any source in a manner that reasonably confirms delivery to the party.

In the case now before us, there was some evidence of mailing by Dr. J's office. A tracking sheet from Dr. J's office states that a Report of Medical Evaluation (TWCC-69) dated August 12, 2003, was mailed to claimant on August 19, 2003. However, no evidence was presented to indicate that the written notification was provided/delivered to claimant by verifiable means. There was no signature card, or any other verifiable evidence, indicating when the notification was provided/delivered to claimant.

Carrier asserted that claimant had notice and that the notice must have been that mailed by Dr. J's office. Claimant denied that he received the written notice from Dr. J's office. The hearing officer did determine that claimant had "actual knowledge" of the certification from Dr. J's office in September 2003. The hearing officer stated that, "[c]learly, the claimant had knowledge of the IR before the end of September 2003, and clearly he got it from [Dr. J's] office." However, the issue here is not whether claimant had actual knowledge of the first certification. This case does not turn on whether the hearing officer believes that claimant received a TWCC-69 from Dr. J's office sent by regular mail. The issue is whether the 90-day rule's clock was triggered. We conclude

¹ Rule 130.12 was adopted by the Texas Workers' Compensation Commission (Commission) to be effective on March 14, 2004. Although it was not in effect at the time the claimant received his first certification of MMI and assignment of IR, we have said that it is instructive as to the Commission's interpretation of how both versions of Section 408.123(d) can be read together.

that it was not because carrier has not shown that there was provision/delivery of written notice through *verifiable means*.

The preamble states 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. Here, claimant did not acknowledge receipt, and the carrier did not otherwise prove delivery of written notice by verifiable means in September 2003. There was no reversible error.

We affirm the hearing officer's decision and order.

According to information provided the carrier, the true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 EAST CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge