

APPEAL NO. 050747-s
FILED MAY 18, 2005

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 March 3, 2005. The hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by (Dr. D), the designated doctor, on August 12, 2004, did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12).

The appellant (claimant) appealed, contending that the designated doctor's "medical report was received by the [respondent (carrier)] in August 2004" and that report was not disputed until December 7, 2004, which was more than 90 days after the carrier received the report. The carrier responded, citing the provisions of Rule 130.12(b). In addition, the carrier contends that Dr. D's report included impairments for body parts not part of the compensable injury.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. It appears undisputed that Dr. D's report dated August 12, 2004, certifying MMI on that date with a 15% IR was the first certification of MMI and IR. Although the carrier and the hearing officer point to some incongruities with this report we limit our focus in this case on the finality provisions of Section 408.123(d) and Rule 130.12.

The hearing officer comments that Dr. D's narrative report was sent to the carrier on August 17, 2004, as evidenced by the "fax lines on the report" and that the carrier's evidence indicated that the narrative was received by the carrier the same day, August 17, 2004. Subsequently on September 13, 2004, Dr. D faxed a copy of the Report of Medical Evaluation (TWCC-69) to the carrier. On the cover sheet of the September 13, 2004, the words "DD Report" are marked out and "TWCC-69" is written above the words DD Report. It is undisputed that the carrier disputed Dr. D's certification on December 7, 2004 (which is 85 days after September 13, 2004, but more than 90 days after August 17, 2004) by filing a Request for Benefit Review Conference (TWCC-45). The claimant contends that the carrier received Dr. D's certification of MMI and IR in August and therefore the carrier's dispute was not timely.

As noted by the hearing officer the Appeals Panel has addressed the arguments regarding delivery by verifiable means and the deemed receipt rule in Texas Workers' Compensation Commission Appeal No. 042163-s, decided October 21, 2004, and Texas Workers' Compensation Commission Appeal No. 050570-s, decided April 28, 2005. Our focus in this case is whether the receipt of the narrative report on August 17,

2004, was sufficient to begin the 90 day clock of Section 408.123(d) and Rule 130.12. Section 408.123(d) provides that the first valid certification of MMI and IR becomes final if not disputed within 90 days after written notification is provided by verifiable means. Rule 130.12(b) similarly provides that 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. Further Rule 130.12(c) states:

- (c) A certification of MMI and/or IR assigned as described in subsection (a) must be on a form TWCC-69, report of Medical Evaluation. The certification on the form TWCC-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;
 - (3) There is the signature of the certifying doctor who is authorized by the Commission under § 130.1(a) to make the assigned impairment determination.

We hold that where the rule states that the MMI and/or IR assigned “must be on a Form TWCC-69, Report of Medical Evaluation” other means of communication of the MMI/IR, such as in this case, by means of a narrative report without a TWCC-69, are insufficient to begin the 90 day dispute period of Section 408.123(d) and Rule 130.12(b).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
CSC-LAWYERS INCORPORATING SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge