APPEAL NO. 042044-s
FILED OCTOBER 8, 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 26, 2004. The hearing officer determined that the appellant's (claimant) first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by the doctor selected by the treating doctor on August 6, 2003, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12). The claimant appealed on legal and sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on _____. It is undisputed that the claimant was examined for purposes of determining MMI and IR by a referral doctor on August 6, 2003, and that the examining doctor placed the claimant at clinical MMI as of that date with a 5% IR. It is also undisputed that this was the first certification of MMI and IR and that the claimant did not dispute the certification within 90 days. The Report of Medical Evaluation (TWCC-69) containing the above certification was clearly not signed by the certifying doctor. An unidentified individual with the initials "BO" signed the TWCC-69 "for" the certifying doctor. We note that "BO" also signed the same TWCC-69 for the "treating doctor." At issue is whether or not the August 6, 2003, certification, which is dated August 20, 2003, is a valid certification which can become final under Rule 130.12.

In reaching his determination that the certification in question is valid and did become final under Rule 130.12, the hearing officer found that "BO" is an "apparent agent" of the certifying doctor. The hearing officer relied on the law of agency in reaching his determination. We find that the hearing officer erred as a matter of law.

Rule 130.12(a)(1) provides that before a certification of MMI and IR may become final, it must be a valid certification. Rule 130.12(c)(3) provides that in order for the certification contained on the TWCC-69 to be valid, it must contain the signature of the authorized certifying doctor. Rule 130.1(d)(1)(A) defines what constitutes a valid signature. Rule 130.1(d)(1)(A) states that the TWCC-69 must be signed by the certifying doctor. It further provides that the doctor may use a rubber stamp signature or an electronic facsimile signature of the certifying doctor's personal signature. Nowhere in the rule does it mention that someone other than the certifying doctor can sign his or her name on the TWCC-69, authorized or not. Because we find that the definition contained in Rule 130.1 regarding what constitutes a valid signature is clear and unambiguous, we find no reason to look to the law of agency to resolve the issue in this case. We find that to be valid, the certifying doctor must have actually signed the

TWCC-69, or his or her signature must have been affixed with a rubber stamp or an electronic facsimile signature of the certifying doctor's personal signature. We find that the certification contained on the TWCC-69 dated August 20, 2003, is not valid due to the lack of the certifying doctor's signature, and that due to its invalidity, pursuant to Rule 130.12 the August 20, 2003, certification cannot become final.

We believe that this interpretation of the law is consistent with the 1989 Act; Rule 130.1 as amended to be effective March 14, 2004; the preamble to amended Rule 130.1; Rule 130.12 as adopted to be effective March 14, 2004; and long standing Appeals Panel precedent. The Appeals Panel has long held that to be a valid certification of MMI and IR under Rule 130.1, the TWCC-69 must be signed by the certifying doctor. In Texas Workers' Compensation Commission Appeal No. 951326, decided September 25, 1995, we reasoned that the purpose for requiring the certifying doctor to sign the TWCC-69 was to help ensure that the information on the TWCC-69 and/or attached report is in fact the opinion of the certifying doctor. The preamble to amended Rule 130.1 requires the TWCC-69 to be signed by the certifying doctor. Rule 130.1(d)(1)(A) requires that the TWCC-69 be signed by the certifying doctor, and specifically defines what a signature is for purposes of the Rule. In short, had the authors of the Rule wanted to allow an "agent" of the certifying doctor to be able to sign the TWCC-69 in the certifying doctor's stead, this could have easily been accomplished by adding it to the Rule. This was not done, and we decline to back away from the plain language of Rules 130.1 and 130.12, the preamble to Rule 130.1, and our long standing precedent.

The hearing officer's decision and order that the August 6, 2003, certification of MMI and IR, which was dated August 20, 2003, did become final under Rule 130.12 is reversed and a new decision is rendered that the August 6, 2003, certification dated August 20, 2003, is invalid and therefore did not become final under Rule 130.12. Because there are no other certifications indicating that the claimant is at MMI in the record, the claimant's date of MMI and IR cannot be determined at this time.

The true corporate name of the insurance carrier is **EMPLOYERS INSURANCE OF WAUSAU, A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

RICK KNIGHT
105 DECKER COURT, SUITE 600
IRVING, TEXAS 75062.

_____
Daniel R. Barry
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Margaret L. Turner
Appeals Judge