

ADVISORY NO. 292
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TOPIC: MAKE CERTAIN THE NINETY DAYS IS RUNNING
(A Suggested Procedure to Work Around the 135(e) Amendment)

Rule 130.5 was amended effective March 13, 2000. A first rating of impairment report after that date is not binding upon a claimant unless the Commission sends notice of the first rating. The rule now provides:

The first certification of MMI and impairment rating assigned to an employee is final if the certification of MMI and/or the impairment rating (IR) is not disputed within ninety days after written notice of the MMI and IR is sent by the Commission to the parties. As evidenced by the date of the letter . . . *“is sent by the Commission to the parties.”*

[emphasis added]. Rule 130.5(e). Thus, if the source of the first written notice is the doctor, the carrier or employer, or anyone else besides the Commission, it is legally irrelevant in terms of barring the claimant from later disputing the rating. The ninety days does not even begin to run until the Commission sends the letter to the claimant. Note that the rule provides that the operative date is the date it is “sent by the Commission” instead of the date “received by the claimant.”

TWCC may overlook this responsibility. They may fail to identify an impairment rating as the first rating. Because they will send a copy of this notice to the carrier, we strongly recommend that you diary your file for a 2-week date and monitor for receipt of the Commission notice of impairment. If not received, we recommend that you notify the Commission as per the below.

Note that the Commission will never send a notice of impairment if the case is a no-lost-time file. No-lost-time files are established as “X” files. The Commission does not establish a year prefix to the file number. These should be readily identifiable. Because these files are not established on the Commission database, they will not match up the correspondence to the file, and they will never generate a letter. On all no-lost-time or “X” files, you should notify the Commission. We recommend that you notify the Commission by sending a letter. Request that TWCC send a Rule 130.5(e) notice to the claimant. Attach a copy of the TWCC-69 and accompanying narrative, if any, reflecting the certification of MMI and the impairment rating. This letter should be addressed to Wanda Diggs, MS-98, Texas Workers’ Compensation Commission, 4000 South IH-35, Austin, TX 78704-7491. A sample transmittal letter is attached. If you have any questions, contact FO&L.

FLAHIVE, OGDEN & LATSON

Ms. Wanda Diggs
Texas Workers' Compensation Commission
MS-98
4000 South IH-35, Austin, TX 78704-7491

Re: (Your Customary File Reference Information)

FIRST CERTIFICATION OF MMI AND IMPAIRMENT RATING

Dear Ms. Diggs:

We request that the Commission notify all parties of the attached first certification of MMI and Impairment Rating as per Rule 130.5(e). A complete copy of the TWCC-69, and/or narrative is attached to this report.

Identifying information for the claim is contained in the reference above. The claimant's mailing address is below.

Thank you for your prompt assistance in response to this request.

Claimant's Mailing Address:

Sincerely,