APPEAL NO. 002100

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On July 20, 2000, a contested case hearing (CCH) was held. With regard to the only issue before him, the hearing officer determined that the lumbar, thoracic and cervical spine areas were not part of respondent claimant's _____, compensable (left wrist, left hand and left arm) injury.

Dr. A, filed a "Notice of Appeal," asserting that his patient, Mr. M, had presented to his office on February 19, 1999, with certain complaints; that Mr. M had described his fall to Dr. A; that various diagnostic studies had been performed; and that, in Dr. A's opinion, the cervical and lumbar regions had been involved in the compensable injury. Dr. A requests that we "review all of the necessary documentation in regard to the area of questions of that the cervical and lumbar region." Initially, there was no service on the respondent carrier; the carrier being verbally advised that an appeal had been filed, filed a response. Subsequently, in a letter dated September 25, 2000, to the Texas Workers' Compensation Commission the carrier advised that it had been in contact with Dr. A's office, which had "advised us [the carrier] that they [Dr. A's office] had assisted the Claimant in filing a Request for Review" and that the Request for Review had been sent to the carrier rather than the carrier's counsel. In another letter, dated September 28, 2000, the carrier states:

> [Dr. A] contacted our office on September 20, 2000, advising us that they had assisted the Claimant in filing a Request for Review, and that it had been sent to the Carrier. Carrier has now reviewed the documents that have been received in this case, and there is not a Request for Review from the Claimant. A letter was received from [Dr. A] with an attached medical and a copy of our decision from the [CCH] officer. There was not a Request for Review within the materials received from [Dr. A].

DECISION

Finding that Dr. A has no standing to appeal because he was not a party to the CCH, we dismiss Dr. A's "appeal" and, noting that the time period to appeal the hearing officer's decision and order (required to have been mailed no later than September 19, 2000) has now passed, the hearing officer's decision has become final. Section 410.169.

Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3 (Rule 143.3) provide that "a party" to the CCH may appeal the hearing officer's decision. We have previously held that an employer who is not a party at the CCH has no standing to appeal the decision of a hearing officer adverse to the carrier. *See* Texas Workers' Compensation Commission Appeal No. 001946, decided October 2, 2000, and cases cited therein.

Similarly, in an analogous situation regarding whether a claimant's treating doctor may dispute the first assigned impairment rating pursuant to Rule 130.5(e), we have held that a treating doctor may do so with the key factor to consider being whether the doctor was acting with the involvement and authority of the claimant and how that involvement was shown. *See* Texas Workers' Compensation Commission Appeal No. 000652, decided May 10, 2000. In this case, although medical reports of the treating doctor were admitted, Dr. A was not present at the CCH and there is no evidence that claimant requested that Dr. A appeal the hearing officer's decision on his behalf. The claimant was assisted by an ombudsman at the CCH and there is nothing in the record regarding what advice, if any, the ombudsman gave the claimant. Further, not even the "Notice of Appeal" filed by Dr. A states that it was being done on behalf of the claimant. It only states the patient presented and was treated by Dr. A.

We distinguish Texas Workers' Compensation Commission Appeal No. 950660, decided June 14, 1995; Texas Workers' Compensation Commission Appeal No. 941578, decided January 9, 1995; and Texas Workers' Compensation Commission Appeal No. 941138, decided October 10, 1994 (Unpublished), all cases where Dr. W represented or assisted different claimants. In Appeal No. 950660, *supra*, the only case where Dr. W's standing to represent the claimant was challenged, the Appeals Panel noted that there was a specific "notarized letter, signed by Claimant authorizing [Dr. W] to serve as [claimant's] representative. The letter also identifies [Dr. W] as a subclaimant." In Appeal No. 941138, *supra*, the claimant was the respondent and Dr. W was also a subclaimant. In Appeal No. 941578, *supra*, Dr. W was just listed as representing the claimant on appeal without touching on the circumstances. Had Dr. A in this case included a notarized letter, as was the case in Appeal No. 950660, *supra*, we would have accepted Dr. A as representing the claimant. As it was, there is nothing to indicate that Dr. A's appeal was on behalf of the claimant or with the involvement or at the request of the claimant.

Dr. A's appeal is dismissed for lack of standing to appeal the decision of the hearing officer and the hearing officer's decision has become final.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge