APPEAL NO. 012199
FILED OCTOBER 18, 2001

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 August 27, 2001. With respect to the sole issue before him, the hearing officer determined that the Texas Workers' Compensation Commission (Commission)-appointed designated doctor did not have a disqualifying association or conflict of interest with the appellant (claimant) which caused a loss of objectivity in reaching his findings as a designated doctor. In her appeal, the claimant argues that the designated doctor should be disqualified because he previously treated her for thoracic and lumbar injuries, and also because he was biased against the claimant as she still owed him medical fees from her prior association with him. The respondent (carrier) responds, urging that the decision and order of the hearing officer be affirmed in all respects.

DECISION

Finding sufficient evidence to support the hearing officer, we affirm.

The claimant was injured on _____[1] She testified that she fell backwards onto her elbows and back. The claimant received treatment from numerous doctors, but the first to assign her an impairment rating (IR) and date of maximum medical improvement (MMI) was Dr. C, who certified that the claimant reached MMI as of January 20, 2000, with a 5% IR for the lumbar spine. The claimant's treating doctor agreed with Dr. C's IR. The claimant disputed Dr. C's IR and date of MMI, so the Commission appointed Dr. P as designated doctor to resolve the issues. After examining the claimant on May 31, 2000, Dr. P agreed with Dr. C as to the date of MMI, but felt that the claimant's whole body IR was 3%, based on injury to the thoracic spine. The claimant then alleged, almost a year later, that Dr. P was inappropriate as her designated doctor, for two reasons.

First, the claimant alleges that, in accordance with the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(b)(2) (Rule 130.6(b)(2)), Dr. P cannot be her designated doctor as he treated her for the same type of injury following a motor vehicle accident (MVA) in 1995. Rule 130.6(b)(2) provides as follows:

> In order to be a designated doctor for a dispute, the doctor shall . . . ***not have previously treated or examined*** the employee within the past 12 months or ***with regard to the medical condition being evaluated by the designated doctor***; . . . [emphasis added].

Dr. P treated the claimant in 1995 and 1996 for injuries to her cervical, thoracic, and lumbar spine that the claimant sustained in an MVA in 1995. As the designated doctor in

[1]There is no discussion about the compensability of the injury, but we must assume compensability is not contested, given that the claimant has come this far in the process.

this instance, Dr. P evaluated the claimant's spinal injuries to her thoracic and lumbar spine[2]; thus, the claimant argued that Dr. P was disqualified to be the designated doctor because the current injury is to the same body/spinal region as the MVA injury. The hearing officer determined that because Dr. P had not previously treated the claimant for the injury in dispute, he was not, under Rule 130.6(b)(2), disqualified as designated doctor, and the evidence supports the hearing officer's determination.

Although we believe it better to avoid the situation of having a designated doctor who previously treated a claimant[3], we note that the prohibition in Rule 130.6(b)(2) is specifically limited to a situation where the designated doctor has treated the claimant for the compensable injury at issue and not to the case of the treatment of other conditions.

Secondly, the claimant alleges that Dr. P was biased because she owed him money from his previous treatment of her and that Dr. P was upset about it. As support for her bias argument, the claimant cited Rule 126.10(a)(4)(A)(v), which reads:

> (4) Disqualifying Association - Any association which may reasonably be perceived as having potential to influence the conduct or decision of the designated doctor.
>
> (A) A disqualifying association between a designated doctor and a party may include:
>
> (v) personal or family relationships.

Whether the designated doctor had bias towards the claimant because of her unpaid medical fees was a question of fact for the hearing officer. The hearing officer determined that because the claimant could not point to any part of Dr. P's report that showed bias and because Dr. P had not begun a collection action against her, he was not biased.

The hearing officer, as finder of fact, is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer's decision is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

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[2]The claimant does not assert that Dr. P also treated her lumbar spine for this injury, but he notes in his records that he did.

[3]*See* Texas Workers' Compensation Commission Appeal No. 002578-S, decided December 22, 2000; and Texas Workers' Compensation Commission Appeal No. 93706, decided September 27, 1993.

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

GEORGE MICHAEL JONES
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge