APPEAL NO. 020026
FILED FEBRUARY 20, 2002

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 November 26, 2001. The hearing officer determined that the appellant's (claimant) correct impairment rating (IR) is 12%. On appeal, the claimant expresses disagreement with the determination. The respondent (self-insured) urges affirmance.

DECISION

Reversed and remanded.

The claimant sustained a compensable injury in ____ and reached statutory maximum medical improvement on May 2, 1996. On September 27, 2000, Dr. G, the Texas Workers' Compensation Commission (Commission)-selected designated doctor, examined the claimant and assigned a 44% IR. On November 3, 2000, Mr. A, who is not a physician, reviewed Dr. G's report on behalf of the self-insured and alleged that it contained several errors. On November 11, 2000, the self-insured requested that a different designated doctor be appointed to determine the claimant's IR, alleging that Dr. G's evaluation was incorrect and biased. The self-insured contended that because Dr. G, a former employee of the self-insured, had previously sued the self-insured and did not prevail, a conflict of interest existed and a new designated doctor needed to be appointed. The Commission did not appoint a new designated doctor, but did seek clarification from Dr. G regarding his IR. In a letter dated December 28, 2000, Dr. G responded and clarified that in arriving at the 44% IR, he combined ratings for sensory impairment with range of motion impairment because both were the result of an inflammatory process, which warranted a combination. Dr. G confirmed the 44% IR and offered to perform another evaluation.

Another evaluation was performed by Dr. G on March 28, 2001, and he again awarded a 44% IR. The claimant's treating doctor, Dr. W, awarded a 26% IR to the claimant on October 8, 2001, and the doctor chosen by the self-insured, Dr. O, awarded 12% on October 18, 2001. Dr. O opined in his report that Dr. G made several errors in arriving at the 44% IR.

The hearing officer determined that the designated doctor's IR is contrary to the great weight of the other medical evidence and, therefore, is not entitled to presumptive weight. The hearing officer concluded that the correct IR is 12%. The hearing officer explains in the Statement of Evidence that the prior relationship between Dr. G and the self-insured "in connection with the degree of impairment found in comparison to the other ratings on Claimant, raise a substantial possibility that the conflict of interest unduly affected Dr. [G's] [IR] in this case."

The relationship between Dr. G and the self-insured, which the hearing officer clearly considered in arriving at his decision, bears more on his qualifications to serve as a designated doctor than whether his opinion should be afforded presumptive weight. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.10(a)(4)(A)(v) (Rule 126.10(a)(4)(A)(v)) provides that a disqualifying association is any association which may reasonably be perceived as having potential to influence the conduct or decision of the designated doctor and includes personal or family relationships. In adopting this rule, we believe that the Commission intended to ensure not only that both parties receive the benefit of an impartial examination by the designated doctor, but also to preclude any association which may reasonably be perceived as having the potential to influence the designated doctor (Rule 126.10(a)(4)). For these reasons, we find it necessary to remand this case in order for a new designated doctor to be appointed to evaluate the claimant and assign an IR.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

The true corporate name of the carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
1021 MAIN STREET, SUITE 1150
HOUSTON, TEXAS 77002.

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge