APPEAL NO. 021506
FILED JULY 23, 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 May 28, 2002. The hearing officer determined that Dr. W is disqualified from acting as the designated doctor.

The appellant (claimant) appeals, citing Appeals Panel decisions and asserting that there was no disqualifying association to preclude Dr. W from acting as the designated doctor. The respondent (carrier) responds, urging affirmance.

DECISION

Reversed and Rendered.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(d)(2)(B) (Rule 130.5(d)(2)(B)) provides that a designated doctor shall "not have any disqualifying association" as specified in Rule 180.21. Rule 180.21(o)(2)(A) defines "disqualifying association" as:

> [A]ny 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:
>
> (i) receipt of income, compensation, or payment of any kind not related to health care provided by the doctor;
>
> (ii) shared investment or ownership interest;
>
> (iii) contracts or agreements that provide incentives, such as referral fees, payments based on volume or value, and waiver of beneficiary coinsurance and deductible amounts;
>
> (iv) contracts or agreements for space or equipment rentals, personnel services, management contracts, referral services, or warranties, or any other services related to the management of the doctor's practice; [or]
>
> (v) personal or family relationships.

Although this case involves some factual contradictions as to whether the claimant made contact with Dr. W's office on May 24 or May 29, 2001, and whether the contact

was by telephone as the claimant testified to or in person as alleged by the carrier, it is undisputed that the claimant did not see Dr. W, was not treated by Dr. W, and Dr. W did not bill for any services rendered for that contact. Rule 180.21(o)(2)(A), while not being an exclusive list, gives examples of what a disqualifying association may include. The conduct in this case, either a telephone call or going to the doctor's office to inquire whether the doctor treats workers' compensation patients, does not parallel any of the examples of Rule 180.21(o)(2)(A), nor does the hearing officer suggest it does. To have an "association," the relationship must go beyond mere contact, particularly when the party, as in this case, is only asking if the doctor treats a certain class of patients.

We reject the hearing officer's finding that "[b]ecause [Dr. W's] staff saw and talked with Claimant in [Dr. W's] office . . . an association was created between Claimant and [Dr. W]" as being incorrect as a matter of law. It takes more than mere contact with the staff to create a disqualifying association with the doctor. We reverse the hearing officer's decision that Dr. W "should be disqualified from acting as the designated doctor" and render a new decision that Dr. W is not disqualified from serving as the designated doctor in this case.

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

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Roy L. Warren
Appeals Judge