APPEAL NO. 033159
FILED JANUARY 26, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on November 10, 2003. The hearing officer resolved the disputed issue by deciding that Dr. T was not properly appointed to be the designated doctor because he did not have the necessary qualifications required by Section 408.0041(b) of the 1989 Act. The appellant (carrier) appealed, arguing that the hearing officer's determination was against the great weight and preponderance of the evidence. The carrier argues that at the time the respondent (claimant) saw Dr. T he did not appear to be actively treating for the thoracic spine and that no actual evidence was submitted regarding the type of patients Dr. T sees. The claimant responded, urging affirmance and contending that all the evidence presented supported the claimant's position that Dr. T is a plastic surgeon and does not treat back injuries.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained a compensable injury to his thoracic spine. The medical records reflect that the claimant underwent a right T5 thoracotomy with harvest of right T5 rib graft, partial corpectomy of T6 and T7 with microsurgical resection of disc extrusion and spinal cord decompression and nerve roots at T6-7. The parties agreed that the issues of maximum medical improvement and impairment rating should not be decided at the CCH and the hearing officer withdrew the issues from consideration. The sole issue to be decided at the CCH was whether Dr. T was properly appointed by the Texas Workers' Compensation Commission (Commission) as the designated doctor.

Section 408.0041(b) provides in relevant part that the designated doctor should be one:

> [W]hose credentials are appropriate for the issue in question and the injured employee's medical condition. The designated doctor doing the review must be trained and experienced with the treatment and procedures used by the doctor treating the patient's medical condition, and the treatment and procedures performed must be within the scope of practice of the designated doctor.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(d)(2)(C) (Rule 130.5(d)(2)(C)) provides that:

> If at the time the request is made, the commission has previously assigned a designated doctor to the claim, the commission shall use that

> doctor again, if the doctor is still qualified as described in this subsection and available. Otherwise, the commission shall select the next available doctor on the commission's Designated Doctor List who:…has credentials appropriate to the issue in question, is trained and experienced with the treatment and procedures used by the doctor treating the patient's medical condition, and whose scope of practice includes the treatment and procedures performed. In selecting a designated doctor, completed medical procedures may be considered secondary selection criteria.

The hearing officer found that the claimant was still being treated by his surgeon at the time the Commission selected Dr. T to be the designated doctor. As noted by the hearing officer, the evidence reflects that the surgeon saw and treated the claimant in March 2003 and again in July 2003. Whether the designated doctor is qualified to serve is a threshold issue that must be resolved before the question of whether the rating is entitled to presumptive weight is reached. We have said that the burden of establishing that the designated doctor is not qualified rests with the party disputing the qualifications. Texas Workers' Compensation Commission Appeal No. 031015, decided June 9, 2003.

The hearing officer noted that the Designated Doctor Application (TWCC-72) matrix used in appointing the designated doctor, with regard to the spinal cord, showed that Dr. T alleged he was trained and experienced in every phase of treatment, except actually performing spinal surgery and that for the back and neck Dr. T claimed he was trained and experienced in every phase of treatment, including performing surgery. However, the hearing officer further noted that Dr. T is a plastic surgeon, an ear-nose-throat specialist, and a hand specialist, which is corroborated by his curriculum vitae. The hearing officer specifically found that Dr. T was not sufficiently trained and experienced with the treatment and procedures used by the claimant's treating doctor and the claimant's spinal surgeon for the claimant and Dr. T did not perform similar treatment and procedures within the scope of his own medical practice. There is sufficient evidence in the record to support the hearing officer's determination. Accordingly, we find no merit in the assertion that the hearing officer erred in applying the requirements of Section 408.0041(b) and Rule 130.5.

We affirm the decision and order of the hearing officer.

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

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge