APPEAL NO. 040080
FILED MARCH 5, 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 was held on December 11, 2003. With respect to the issues before her, the hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on December 11, 2002, with an impairment rating (IR) of 17%, based upon the report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In its appeal, the appellant (carrier) argues that the hearing officer erred in finding that the carrier was estopped from disputing the choice of designated doctor because the carrier did not dispute the appointment of the designated doctor, who the hearing officer concluded was improperly appointed by the Commission, until after the designated doctor had already issued his report on certifying MMI and IR. The carrier also argued that the designated doctor's certification was contrary to the great weight of the medical evidence. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Reversed and remanded.

The relevant facts of this case are not in dispute and the case turns entirely on a matter of law. It is undisputed that the claimant underwent surgery for his compensable injury and that Dr. F, the designated doctor selected by the Commission, is a chiropractor. The hearing officer's factual finding that the treatment of the claimant's compensable injury was not within Dr. F's scope of practice is unappealed. Nor does either party appeal the hearing officer's application of Section 408.0041 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5 (Rule 130.5) to conclude that the Commission did not properly choose Dr. F to be the designated doctor in this case.

The controlling issue before us on appeal is whether the hearing officer could find that the carrier waived its right to challenge the designated doctor's qualifications because it did not do so prior to the time it received the results of that examination. We previously have answered this question in Texas Workers' Compensation Commission Appeal No. 022277, decided October 23, 2002, wherein we stated as follows:

> Under Rule 130.5(d)(2), the Commission is charged with the responsibility of ensuring that a designated doctor is still qualified before scheduling an appointment with the designated doctor to reexamine the claimant. We find no authority for relieving the Commission of its obligation in that regard, even if the party's challenge to the qualifications of the designated doctor comes after the results of the examination are known.

Based upon our holding in Appeal No. 022277, we reverse the decision of the hearing officer and remand this case for the appointment of a designated doctor who complies with Section 408.0041 and Rule 130.5.

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. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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

LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.

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Gary L. Kilgore
Appeals Judge

CONCUR:

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Judy L. S. Barnes
Appeals Judge

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Margaret L. Turner
Appeals Judge