

APPEAL NO. 110687  
FILED JULY 18, 2011

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 April 14, 2011, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the sole disputed issue before her, the hearing officer determined that Dr. J should not be disqualified as the designated doctor due to a disqualifying association as described in 28 TEX. ADMIN. CODE § 180.21 (Rule 180.21).<sup>1</sup>

The appellant (claimant) appealed, contending that Dr. J had a disqualifying association pursuant to Rule 180.21(a)(2)(F). The respondent (self-insured) responded, contending that there was no contract or other disqualifying association which would disqualify Dr. J from serving as a designated doctor in this case.

DECISION

Reversed and a new decision rendered.

The facts in this case are not in dispute. The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. The parties also stipulated that the Political Subdivision Workers' Compensation (Alliance) is the trade name for a group of five Texas intergovernmental risk pools (Pools) that have joined together to exercise the option to directly contract with health care providers for the provision of workers' compensation medical benefits to the injured employees of the member Alliance of each Pool. The claimant is an employee of the self-insured, which is a member of one of the Alliance's member Pools. The parties further stipulated that the Alliance is not a Texas Workers' Compensation Network as provided for under Chapter 1305 of the Texas Insurance Code but rather is an entity created in accordance with Section 504.053; whereby the Alliance directly contracts with health care providers. The parties also stipulated that the Alliance has a contract with (CN) (which the claimant contends is a health care provider as defined in Section 401.011(22)), that Dr. J performs work for CN and that the claimant "was/is required to seek treatment with the health care providers that have contracted with [the] Alliance" which in this case was CN.

In her Background Information, the hearing officer comments that the Alliance is not a Health Care Network (which would be governed by the provisions of Chapter 1305 of the Texas Insurance Code) and "[t]herefore Rule 180.21(a)(2)(F) does not apply." Rule 127.5(c)(1) references Rule 180.21 with regard to disqualifying associations.<sup>2</sup> Rule 180.21(a)(2), defines a disqualifying association as any association that may reasonably be perceived as having the potential to influence the conduct or decision of

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<sup>1</sup> We note that the hearing officer in her Conclusion of Law and the Decision mistakenly refers to "Rule 180.12" rather than Rule 180.21.

<sup>2</sup> This provision was formerly found in Rule 126.7(h)(2) which has been superceded.

a (designated) doctor. Rule 180.21(a)(2)(F) does not apply in this case because the Alliance is not a health care network; however, the other portions of Rule 180.21(a)(2) would be applicable to this case.

Rule 180.21(a)(2) states that a disqualifying association may include:

\* \* \* \*

(D) 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;

\* \* \* \*

(G) any other financial arrangement that would require disclosure under the Labor Code or applicable [Texas Department of Insurance, Division of Workers' Compensation] rules, the Insurance Code or applicable Department rules, or any other association with the injured employee, the employer, or insurance carrier that may give the appearance of preventing the designated doctor from rendering an unbiased opinion.

The hearing officer states in her Background Information and in a finding of fact that there "is no financial arrangement or any other association with the injured employee, the employer, or the insurance carrier that gives the appearance of preventing the designated doctor from rendering an unbiased opinion." We disagree. In this case, it is stipulated that the claimant was and is required to seek treatment with CN, which is a health care provider that has contracted with the Alliance in which the self-insured is a member. Similarly, it is undisputed that Dr. J, the designated doctor, also "performs work" for CN. The same entity that is treating the claimant also employs the designated doctor, who is to render an unbiased opinion. Under the facts of this case, the association that Dr. J has with CN, where the claimant is required to seek treatment, may reasonably be perceived as having the potential to influence the conduct or decision of the designated doctor. See Rule 180.21(a)(2)(D) and (G).

In reviewing a "great weight" challenge, we must examine the entire record to determine if: (1) there is only "slight" evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Accordingly, we hold that the hearing officer's determination that Dr. J should not be disqualified as the designated doctor, due to a disqualifying association as described in Rule 180.21 to be so against the great weight and preponderance of the evidence as

to be clearly wrong and manifestly unjust. We reverse the hearing officer's determination that Dr. J should not be disqualified as the designated doctor due to a disqualifying association as described in Rule 180.21 and we render a new decision that Dr. J is disqualified as the designated doctor due to a disqualifying association as described in Rule 180.21.

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

**SUPERINTENDENT  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Cynthia A. Brown  
Appeals Judge

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Margaret L. Turner  
Appeals Judge