

APPEAL NO. 021303
FILED JULY 11, 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 April 19, 2002. The appellant (self-insured) appeals the hearing officer's determinations that the Texas Worker's Compensation Commission (Commission) did not abuse its discretion in appointing Dr. M as the designated doctor; that on November 30, 2001, the employer did not make a bona fide offer of employment (BFOE) to the respondent (claimant); that on December 19, 2001, the employer did not make a BFOE to claimant; and that from September 10, 2001, until March 11, 2002, the claimant had disability. There is no response to the appeal from the claimant contained in our file.

DECISION

Reversed and rendered in part and reversed and remanded in part.

An impairment rating dispute arose and on December 20, 2001, the Commission appointed Dr. M as the designated doctor. Prior to the designated doctor examination the self-insured objected to the appointment of Dr. M as the designated doctor because he had filed a lawsuit against the self-insured and its adjuster in 1999 alleging that the adjuster was discouraging the self-insured's employees from seeking treatment at Dr. M's facilities.

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)); Texas Workers' Compensation Commission Appeal No. 020026, decided February 20, 2002. Where a party has been sued by the designated doctor for allegedly discouraging its employees from seeking care from the designated doctor, there is a circumstance "which may reasonably be perceived as having the potential to influence." For these reasons, we find that the Commission abused its discretion in appointing Dr. M as the designated doctor in this case.

With respect to the hearing officer's determinations that the employer did not make a BFOE and that the claimant had disability from September 10, 2001, until March 11, 2002, we have concluded that those issues are not ripe for adjudication. A threshold determination of disability is whether there was a compensable injury. Disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). Because

there has been no determination that there was a compensable injury, we cannot affirm or reverse a determination that there was disability or no BFOE. We remand for the hearing officer to resolve that threshold issue of whether the claimant sustained a compensable injury and then she may resolve the BFOE and disability issues.

We reverse the hearing officer's determination that the Commission did not abuse its discretion in appointment of Dr. M as the designated doctor and render a new decision that the Commission did abuse its discretion. We also remand the case to the hearing officer for determination of whether the claimant sustained a compensable injury and resolution of the BFOE and disability issues in light of the injury determination.

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

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

Roy L. Warren
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge