

APPEAL NO. 980312  
FILED APRIL 1, 1998

Following a contested case hearing (CCH) held in (City), Texas, on January 30, 1998, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by finding that Dr. H and Dr. V recommended that the respondent (claimant) have spinal surgery and Dr. M recommended that claimant not have spinal surgery, and that the great weight of the medical evidence is not contrary to the recommendation for spinal surgery by Dr. H and Dr. V. The appellant (carrier) has appealed, asserting that Dr. V does not agree with Dr. H's diagnostic findings and prognosis and urging that the great weight of the evidence compels a determination that no surgery is appropriate at this time. The file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable injury on \_\_\_\_\_, that Dr. H, the surgeon, and Dr. V recommended that claimant have spinal surgery, and that Dr. M recommended that claimant not have spinal surgery.

Claimant testified that he was working as a roofer when he injured his back; that he underwent a microdiscectomy at the L5-S1 level by Dr. M on September 18, 1996, which has not helped him; that the designated doctor, Dr. J, determined that he reached maximum medical improvement on April 15, 1997, with an impairment rating of eight percent; that he and Dr. H both disagree with the designated doctor; that he has had conservative treatment including a back brace and epidural steroid injections (ESIs); and that he understands the risks of the proposed surgery.

Dr. H's record of May 15, 1997, stated that claimant had a "dramatic disc rupture" and has undergone surgery without improvement; that he has obvious motor and sensory deficits; and that he, Dr. H, recommends a lumbar discogram with CT and nerve conduction studies. Dr. H reported on July 24, 1997, that the discogram with CT revealed a two-level disc disorder, with one apparently not recognized in the past and the other incompletely addressed by the prior surgery. Dr. H proposed lumbar ESIs, and a probable 360° fusion/decompression pending the ESIs. On December 11, 1997, Dr. H reported that claimant wished to proceed with surgery. According to the Recommendation for Spinal Surgery (TWCC-63), the diagnosis is lumbar disc disease with myelopathy and the recommended procedures included decompression, fusion and fixation at L4-5 and L5-S1.

In his January 5, 1997, report, Dr. V stated that claimant underwent a microdiscectomy at L5-S1 by Dr. M in October 1996; that since that surgery, claimant's left leg radicular pain in has improved but his back pain is getting progressively worse;

that he has severe mechanical back pain which interferes with all his activities of daily living; that the pre-op MRI showed a large herniated disc at L5-S1; that the recent discogram shows some disruption at L4-5 and L5-S1 with a degenerative narrow disc at L5-S1; and that he does not see evidence on the post-discogram CT of a recurrent disc in the canal. Dr. V stated that he concurred with Dr. H's recommendation for a two-level 360° fusion decompression.

Dr. M's report of January 6, 1998, stated that his appraisal was spondylogenic lumbosacral spine pain associated with left lower extremity pain, chronic, anatomic etiology undetermined. Dr. M further stated that claimant did not have any significant physical findings, that he did not believe claimant's long-term interest would be best served with the proposed surgery, that he would recommend a repeat MRI with gadolinium enhancement, and that if claimant has a recurrent L5-S1 disc herniation, he would recommend a microlumbar discectomy.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206(K)(4) (Rule 133.206(K)(4)) provides, in part, that of the three recommendations and opinions (the surgeon's and the two second opinion doctors'), presumptive weight will be given to the two which had the same result, and they will be upheld unless the great weight of medical evidence is to the contrary.

We are satisfied that the hearing officer's findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find Dr. M's second opinion non-concurring in the proposed surgery and Dr. V's not seeing evidence of a recurring disc in the canal on the post-discogram CT and his reference to the proposed surgery as a "salvage operation" to constitute the great weight of the medical evidence.

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge