

APPEAL NO. 000978

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 7, 2000. The hearing officer determined that the respondent's (claimant) request for spinal surgery be approved. The appellant (carrier) appealed and argues that there was no concurrence by the claimant's second opinion doctor as to the type of surgery. The claimant responded by reciting evidence in favor of the decision and pointing out that the second opinion doctor did concur with the recommended type of surgery.

DECISION

We affirm the hearing officer's decision.

The claimant injured her back on _____. She underwent a laminectomy on March 8, 1991. She apparently did well until she reinjured her back while using a stepladder at work on _____. She was treated conservatively. The claimant's treating doctor is Dr. H, who recommended surgery for the claimant on or about October 11, 1999. While argument has been made by the carrier about the meaning of the "CPT" codes he used on his Recommendation for Spinal Surgery (TWCC-63), at least three doctors have read this to involve a decompression at L4-5 with a fusion. (No evidence was presented as to what the CPT codes mean nor was official notice requested.) The other three doctors are both of the second opinion doctors and Dr. L, a peer review doctor for the carrier.

Claimant was examined by Dr. M for the carrier on November 2, 1999. Dr. M points out that Dr. H has recommended a posterior decompression and fusion at L4-5 for recurrent disc herniation and segmental instability. Dr. M questioned the existence of the herniation from what he reviewed and recommended that claimant have a repeat MRI. Dr. M stated "[i]f that study clearly demonstrates a disc herniation with specific nerve root compromise to explain the patients' symptoms, I would at that point agree with the necessity of decompressive surgery and fusion." But he declined to concur based upon the information he was furnished.

The claimant was examined by her second opinion doctor, Dr. C. Dr. C's report indicates a discussion with the claimant about the pros and cons of surgery and specific risks posed by her smoking that might affect the success of any surgery. However, Dr. C concluded by agreeing with the need for surgery. Dr. C wrote about telling claimant that in her case surgery should include L4-5 decompression and fusion and that it was reasonable to consider surgery as her next step. While Dr. C indicated that other types of surgery were discussed with the claimant, Dr. C checked the box on the summary sheet that indicated concurrence with surgery, and did not check the line stating: "Yes, surgery is indicated, but I recommend a different procedure."

We cannot agree with the carrier's argument that Dr. C's opinion does not qualify as a true concurrence under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206(a)(13) (Rule 133.206(a)(13)). The cases cited by the carrier are not applicable here and we do not read Dr. C's narrative as tantamount to a qualifier on the type of surgery, especially in light of the summary sheet. In our opinion, there can be no ambiguity in concurrence with the type of procedure recommended by the treating doctor when the second opinion doctor declines to check that he or she recommends a different procedure and checks instead the unqualified recommendation line on the summary sheet. Dr. C's narrative report plainly states agreement that a decompression and fusion at L4-5 is the procedure called for in claimant's case.

We accordingly affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Alan C. Ernst
Appeals Judge