APPEAL NO. 001416

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 19 and May 25, 2000. The record closed on May 29, 2000. The hearing officer determined that the respondent's (claimant) request for spinal surgery is approved. The appellant (carrier) appealed on the grounds that the hearing officer's decision and order was invalid because it was rendered before all the evidence was received and that there was no true concurrence because neither second-opinion doctor agreed to the additional laminectomy/decompression procedure and implantation of cages recommended by the claimant's surgeon. The claimant responded that the evidence was sufficient to affirm the hearing officer's decision and order.

DECISION

Affirmed as reformed.

We address the carrier's contention that the hearing officer's decision and order are invalid because the signature date was May 5, 2000, and the hearing was not completed until May 25, 2000. The hearing officer's decision and order was received by the Chief Clerk of Proceedings on June 6, 2000, and it is clear the date of May 6, 2000, is merely a typographical or clerical error which does not render the entire decision and order invalid. We reform the signature date to June 6, 2000, from May 6, 2000, to properly reflect the date of receipt in the proceedings section for review.

Dr. M recommended spinal surgery and submitted a Recommendation for Spinal Surgery (TWCC-63) which included CPT codes and their interpretation for an anterior and posterior fusion (360E fusion) with orthopedic hardware cages and a laminectomy/ decompression. A narrative report from Dr. M addressed the proposed surgery with "I would recommend he have an anterior and posterior arthrodesis (fusion) [sic] with cages." Dr. M did not address the laminectomy in this report. The carrier did not agree to the spinal surgery and the second-opinion process was initiated.

The claimant selected Dr. B as his second-opinion doctor. Dr. B submitted his Spineline Fax Response Form signed on December 2, 1999. He checked off the line on the form that stated, "Yes, I agree that the recommended procedure is needed." Rule 133.206(a)(13). He did not check off the line, "NO, I do not concur because:" nor the related lines that included the statement, "I would recommend a different TYPE of spinal surgery." In his narrative report of the same date, Dr. B wrote, "I agree with the proposed 360[E] fusion at L4-5 and L5-S1."

The carrier argued that a concurrence requires agreement, not only with the back surgery but also with the specific procedure proposed, and because Dr. B agreed with the need for a fusion but did not specifically address the laminectomy, the variance should be construed to be a nonconcurrence. We disagree. Dr. B's check off on the SPINELINE FAX RESPONSE FORM line, "Yes, I agree that the recommended procedure is needed,"

constituted a concurrence with the proposed type of spinal surgery in Dr. M's October 9, 1999 RECOMMENDATION FOR SPINAL SURGERY (TWCC-63).

The hearing officer found that the great weight of the other medical evidence was not contrary to the recommendations of Dr. M and Dr. B for spinal surgery.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

In a case such as the one before us where both parties presented evidence on the disputed issue, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. National Union Fire Insurance Co. of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). We conclude that the hearing officer's determinations were not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the hearing officer's decision and order as reformed.

Robert E. Lang
Appeals Panel
Section Manager/Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge