APPEAL NO. 001485
FILED AUGUST 11, 2000

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 May 22, 2000, in _____, Texas, with _____ presiding as hearing officer. At issue was whether the respondent (claimant) should be approved for spinal surgery. The hearing officer approved such surgery, finding that there was a concurrence from a second opinion doctor.

The appellant (carrier) has appealed and argues that these findings are against the great weight and preponderance of the evidence. The carrier complains that the surgeon who recommended surgery failed to list spondylosis and spondylolisthesis as diagnoses on his Recommendation for Spinal Surgery (TWCC-63) form, yet the second opinion doctor who agreed with the need for surgery listed these conditions as the primary consideration. The carrier asserts that it is entitled to be informed of the "exact purpose" of each dollar spent on a compensable claim. The carrier argues that such conditions were not shown to exist. The carrier then argues that such conditions, if they exist, are not work related. The claimant responds that the hearing officer was correct in approving surgery.

DECISION

We affirm the hearing officer's decision.

The causal relationship of spondylosis and spondylolisthesis have been affirmed in another appeal decided this same day, as Texas Workers' Compensation Commission Appeal No. 001484.

The claimant worked as an auto body repairman for (employer). He said that on _____, he was lifting a hood from a vehicle and, as he turned with the hood in his hands, he felt a sharp pain in his back. Because he worked on commission, he continued to work the rest of the day.

The claimant saw the company doctor the next day and was eventually referred to other doctors for further testing. He said that his back problems were progressively getting worse and affected his daily living. He had never had back problems prior to the date of his accident. He had not worked since _____.

The claimant was referred to spinal surgeon, (Dr. M). Dr. M recommended surgery after considering the results of various tests. The claimant said that Dr. M explained all possible complications that could occur, as well as the fact that he might not obtain a benefit from his surgery. He nevertheless wanted to have the surgery because he might be able to return to work if the pain was relieved. The carrier asked

the claimant if it had been explained that there were less serious surgical options and the claimant said that it had been. The claimant had cut his smoking in half.

The medical records pertinent to the spinal surgery recommendation show:

- November 10, 1998 / MRI degenerative changes throughout lumbar area, multilevel spondylosis reported. Protrusion at L4-5 affecting the L5 nerve root.

- April 2, 1999 / Myelogram reported to show mild spondylosis throughout lumbar spine. Impressions on the thecal sac at three levels. Possible edema of L4 nerve root. Underfilling of nerve roots at two levels. Tomography showed protrusion at L1-2,diffuse bulge at L2-3 with sac flattening, likewise at L3-4 and L4-5. Mild to moderate stenosis at L3-4.

- May 17, 1999 / Discogram: L3-4 shows annular tear and protrusion. L4-5 diffusely degenerated disc. A 6/17/99 addendum adds spondylosis and spondylolisthesis at L5-S1.

- June 15, 1999 / Dr. M noted that claimant's EMG showed L5 and S1 radiculopathy. Dr. M said that he would recommend surgery, noting multiple level spondylosis, instability at L5, and periarticular debris at L4-5

- August 5, 1999 / (Dr. H), the carrier's second opinion doctor, apparently considered a surveillance videotape along with his examination and recommended against surgery, noting that the claimant had symptom magnification and would not benefit from surgery.

- September 2, 1999 / (Dr. MU), the claimant's second opinion doctor, agrees with the need for decompression surgery. Dr. MU notes that he has disc degeneration and L5 nerve root impingement and spondylosis throughout his lumbar spine.

The TWCC-63 filed by Dr. M on June 24, 1999, lists the diagnoses as lumbar herniated nucleus pulposus and radiculitis. Dr. MU agreed with the proposed surgery; his brief letter stated that the claimant had L5 nerve root impingement, disc degeneration on MRI, and spondylosis from L1 to S1.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206(k)(4) (Rule 133.206(k)(4)) states that presumptive weight will be given to the two opinions that had the same result, unless the great weight of medical evidence is to the contrary. The only opinions admissible are those of the surgeon and the second opinion doctors.

The "exact" reason for medical treatment is a matter typically supplied through adjustment of the claim and not necessarily through detailed recitation on a TWCC-63

form. The existence of the conditions listed on the TWCC-63 form that were given as a reason for surgery are supported in the medical records. We cannot agree that Dr. MU's opinion is at odds with Dr. M's recommendation because it comments upon some other accompanying conditions in the entire range of the claimant's injury. Although the carrier argued that this letter "disagreed" with the conditions for which surgery was recommended, this was a matter for the finder of fact to consider and we cannot agree that the characterization of the letter by the carrier was the only conclusion to be drawn.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this is the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge