APPEAL NO. 001741

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 July 10, 2000. The CCH was held to determine whether the carrier is liable for spinal surgery related to the respondent's (claimant) compensable injury. She determined that the carrier is liable for the expenses of spinal surgery related to the claimant's compensable injury. The carrier appealed the adverse determination, contending that the great weight and preponderance of the evidence is contrary to the recommendation for spinal surgery by Dr. P and Dr. A. The claimant filed a response that the evidence was sufficient to support the hearing officer's decision and order and should be affirmed.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury to her lumbar spine. Medical records reflect that the claimant has a 5 mm herniated disc at L5-S1 which was confirmed by different studies including an MRI, CT scan, and discogram. An EMG/nerve conduction study did not demonstrate any significant nerve root compression.

By letter dated March 27, 2000, Dr. P recommended that the claimant undergo a one-level lumbar laminectomy, diskectomy, and fusion with instrumentation. A Recommendation for Spinal Surgery (TWCC-63) was filed by Dr. P which reflected the surgery as a laminectomy/diskectomy (CPT 4 Code 63047), decompression (CPT 4 Code 63030), and posterolateral fusion (CPT 4 Code 22612 and 22630). The claimant's second opinion doctor, Dr. A, checked on a Spineline Fax Response form dated May 17, 2000, "Yes, I agree that the recommended procedure is needed." By progress note dated May 17, 2000, Dr. A wrote: "[c]onsidering the clinical findings as well as the studies performed and considering that the conservative treatment has failed, I agree with [Dr. P] that this patient needs the operation in order to remove the disc and stabilize it at that level."

Dr. F, the carrier's second opinion doctor, indicated on his Spineline Fax Response form dated May 1, 2000, that he did not concur with surgery because surgery was not indicated for the patient and a different type of spinal surgery was recommended if surgery was elected. The carrier argued that since the claimant's EMG/nerve conduction studies did not indicate nerve compression or impingement, surgery was not necessary.

Section 408.026 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206 (Rule 133.206) pertain to the spinal surgery second opinion process. Rule 133.206(a)(13) provides that a concurrence is a second opinion doctor's agreement that the surgeon's proposed type of spinal surgery is needed and that need is assessed by determining if there are any pathologies in the area of the spine for which surgery is proposed that are likely to improve as a result of the surgical intervention. Rule 133.206(a)(14) provides that a nonconcurrence is a second opinion doctor's disagreement with the surgeon's

recommendation that a particular type of spinal surgery is needed. Rule 133.206(k)(4) provides 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; that they will be upheld unless the great weight of medical evidence is to the contrary; and that the only opinions admissible at the hearing are the recommendation of the surgeon and the opinions of the two second opinion doctors.

The hearing officer found that Dr. A agreed with Dr. P's recommendation for spinal surgery and that Dr. A rendered a concurring opinion, that Dr. F rendered a nonconcurring opinion, and that the spinal surgery second opinions rendered by Dr. A and Dr. P were not contrary to the great weight of medical evidence. The carrier contended that since Dr. A did not specifically state what procedure he agreed to, there was no concurrence. However, Dr. A did state in his letter that he agreed it was necessary to remove the disc and stabilize the spine. The specific medical terminology is not required when lay terminology adequately and accurately describes the same procedure.

The hearing officer concluded that the carrier is liable for the costs of spinal surgery. We cannot conclude that the hearing officer erred as a matter of law in finding that Dr. A's opinion was a concurrence.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Alan C. Ernst
Appeals Judge