

APPEAL NO. 001800

On July 14, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issue by approving the respondent's (claimant) request for spinal surgery. The appellant (carrier) requests that the hearing officer's decision be reversed and that a decision be rendered in its favor. No response was received from the claimant.

DECISION

Affirmed.

The claimant testified that she injured her back, neck, and left wrist at work on _____, when she lifted a heavy machine. Dr. A, the claimant's treating doctor, referred the claimant to Dr. C, a neurosurgeon, for a surgical consultation and in a Recommendation for Spinal Surgery (TWCC-63) dated July 23, 1999, Dr. C diagnosed the claimant as having a herniated nucleus pulposus at L5-S1 and recommended that the claimant undergo a lumbar laminectomy and microdiscectomy at L5-S1.

The carrier chose Dr. H as its second opinion doctor on spinal surgery and Dr. H examined the claimant and recommended against surgery. Dr. H noted in his report that Dr. C had recommended lumbar surgery at L5-S1 and cervical surgery at C5-6; however, Dr. C does not mention cervical surgery in his TWCC-63.

The claimant chose Dr. P as her second opinion doctor on spinal surgery and Dr. P examined the claimant and recommended that the claimant have further diagnostic testing. The claimant underwent the diagnostic testing recommended by Dr. P and Dr. P then recommended that the claimant undergo a L5-S1 laminectomy and microdiscectomy as had been recommended by Dr. C.

The hearing officer found that Dr. C recommended spinal surgery consisting of a lumbar laminectomy and discectomy; that Dr. H, the carrier's second opinion doctor, recommended against surgery; that Dr. P, the claimant's second opinion doctor, recommended surgery consisting of a lumbar laminectomy and discectomy "in accordance with the type of spinal surgery recommended by [Dr. C]"; and that presumptive weight is given to the opinions of Dr. C and Dr. P because their opinions have the same result and because the great weight of the medical evidence is not to the contrary. The hearing officer concluded that the claimant's spinal surgery should be approved and that the claimant satisfied the requirements of Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 133.206 (Rule 133.206). The hearing officer decided that the carrier is liable for the expenses of spinal surgery for the claimant.

Section 408.026 and 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. 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) 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, and 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.

We find no merit in the carrier's contention that neither Dr. H nor Dr. P concurred with Dr. C's "multi-part" surgery because the carrier's argument is premised on its contention that Dr. C recommended cervical and lumbar surgery. Dr. C's TWCC-63 recommended only lumbar surgery and Dr. P concurred with the type of surgery proposed by Dr. C. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge