

APPEAL NO. 002136

On May 23 and August 16, 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 not approving the appellant's (claimant) request for spinal surgery. The claimant requests that we reverse the hearing officer's decision and remand the case to the hearing officer. The respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The claimant's surname is \_\_\_\_\_ (not \_\_\_\_\_ as stated in the hearing officer's decision).

According to medical reports, the claimant had a laminectomy at L4-5 in 1996 and in 1997 he had a fusion from L4 to S1. The claimant testified that on July 20, 1999, he sustained a work-related injury to his shoulder, neck, and back. The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. Dr. G, the claimant's treating doctor for the 1999 injury, referred the claimant to Dr. C, a neurosurgeon, who recommended diagnostic testing of the claimant's lumbar spine. On September 27, 1999, the claimant underwent a lumbar myelogram and CT scan. On October 1, 1999, Dr. BL performed nerve conduction studies and opined that the claimant has mild bilateral L-5 radiculopathy. In a Recommendation for Spinal Surgery (TWCC-63) dated October 8, 1999, Dr. C recommended that the claimant undergo a laminectomy and microdisectomy at L4-5.

On October 12, 1999, Dr. A performed an independent medical examination at the carrier's request and reported that the claimant has a pseudoarthrosis from L4 to the sacrum and that the claimant will require a fusion.

Dr. P, the carrier's second-opinion doctor on spinal surgery, examined the claimant on November 17, 1999, and reported that spinal surgery is not indicated for the claimant. The Texas Workers' Compensation Commission (Commission) was notified of Dr. P's nonconcurrency on November 17, 1999. The Commission's Spinal Surgery File Activity Record/Phone Log (SSFAR) notes on that date "Spine - No." Dr. P's narrative report was received by the Commission on November 22, 1999.

The claimant underwent a lumbar MRI on December 29, 1999, and one of the findings was that there is fusion bone from L4 to S1 without radiographic evidence of solid bony confluence.

On January 11, 2000, Dr. B, the claimant's second-opinion doctor on spinal surgery, examined the claimant and reported that he did not have Dr. C's surgery recommendation

so he did not know the specifics of the operation recommended by Dr. C. Dr. B also reported that the claimant is "surgical" and that if surgery is done, then, in addition to a laminectomy and/or discectomy, another attempt at a fusion should be performed at the bottom two levels of the back. On a Commission form, Dr. B is stated to be the second-opinion doctor and the line "Yes, I concur that surgery is indicated for this patient" is marked, but the form is signed by someone other than Dr. B (it may have been signed by someone from Dr. B's office).

The Commission received Dr. B's narrative report on January 14, 2000. An SSFAR note of that date states "Narr - No (recommends fusion also)." That note is followed by another note dated January 14, 2000, that states "Closing file as CNIX."

In a TWCC-63 dated February 15, 2000, which someone marked as "amended," Dr. C recommended that the claimant undergo a fusion at L4-5 and L5-S1.

A February 16, 2000, SSFAR note states "Recd amended 63 from [Dr. C's] office including procedure codes for fusion, which is what IE 2<sup>nd</sup> op doctor [Dr. B] recommended." That note is followed by another note dated February 16, 2000, that states "Reclosing file as CNIY." There is no indication that Dr. C's amended TWCC-63 was sent to the two second-opinion doctors.

A Commission letter of March 7, 2000, which someone marked as amended, informed the claimant that one of the second-opinion doctors agreed with the claimant's doctor's recommendation for spinal surgery, creating a two-to-one decision in favor of spinal surgery and that that meant that if the carrier does not appeal, they will be responsible for the reasonable and necessary costs of spinal surgery related to the compensable injury.

A Commission memorandum notes that the Commission received the carrier's request for a spinal surgery CCH on March 15, 2000.

Section 408.026(a) and Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 133.206 (Rule 133.206) pertain to the spinal surgery second-opinion process. The parties stipulated that Dr. P, the carrier's second-opinion doctor on spinal surgery, recommended that the claimant not have spinal surgery. The hearing officer determined that Dr. B, the claimant's second opinion doctor on spinal surgery, had issued a nonconurrence with Dr. C's October 8, 1999, recommendation for spinal surgery because Dr. C had not recommended a fusion and Dr. B had recommended a fusion, which was a different procedure. The hearing officer further determined that neither of the second-opinion doctors had issued an addendum concurring with Dr. C's February 15, 2000, recommendation for spinal surgery because the Commission did not follow Rule 133.206(l). The hearing officer denied the claimant's request for spinal surgery. 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.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge