

APPEAL NO. 002531

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 October 10, 2000. The only issue before the hearing officer was "Whether Claimant's [respondent] request for spinal surgery should be approved." With regard to that issue, the hearing officer determined that the claimant's request for spinal surgery is approved.

The appellant (carrier) appeals, asserting that "there is a concurrent spinal surgery issue and compensability issue." The carrier appears to be arguing that the compensability/extent-of-injury issue has not been resolved. The carrier requests that we "modify" the hearing officer's decision and order to "more appropriately state 'Claimant's request for spinal surgery is approved, pending the resolution of the issue of compensability of injury.'" The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

First and foremost, we note that the parties (including the carrier) stipulated on the record that the claimant "sustained a compensable spinal injury on _____." Compensability of a spinal injury is no longer an issue.

Dr. A, the claimant's treating surgeon, recommended cervical spinal surgery in the form of a "C5-6 vertebral corpectomies, C4-7 anterior Fusion and C4-7 anterior [illegible] plate Fixation" on a Recommendation for Spinal Surgery (TWCC-63) dated May 30, 2000. The carrier selected Dr. J as its second-opinion doctor and in a narrative and form both dated June 29, 2000, Dr. J agreed surgery in the form of a posterior cervical laminectomy with no instrumentation was warranted and marked surgery was indicated but that he recommended a different procedure. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206(a)(14) (Rule 133.206(a)(14)) that recommendation amounts to a nonconurrence. The claimant selected Dr. M as his second-opinion doctor and in a report and form dated August 15, 2000, Dr. M concurred with Dr. A. The Texas Workers' Compensation Commission by letter dated September 14, 2000, advised the parties that two doctors had agreed on the recommendation for spinal surgery and that the carrier could appeal. The carrier requested a CCH on this matter on September 22, 2000. On an unsigned and undated Request for Benefit Review Conference (TWCC-45), which the hearing officer comments was filed on October 9, 2000, one day before the CCH, the carrier requested a benefit review conference wherein it "disputes extent of injury." As previously noted, the carrier nonetheless stipulated to a compensable spinal injury the next day, October 10, 2000. At the CCH, the carrier's only argument was that it is "disputing the relatedness of the spinal surgery to the compensable injury."

In the carrier's appeal, it argues that the Appeals Panel has been consistent in finding that the two issues of spinal surgery and compensability "should proceed separately in the dispute resolution process," citing Texas Workers' Compensation Commission Appeal No. 950517, decided May 17, 1995. What we have actually said is that under certain circumstances the two issues may proceed separately. However, as previously noted, there is no compensability issue here as the carrier has stipulated to a compensable spinal injury. Whether that compensable spinal injury is only a spinal strain or something of a more serious nature was resolved by the doctors involved, all of whom recommended some kind of surgery. Even Dr. J agreed that surgery was necessary but only recommended a different procedure.

We find no merit in the carrier's argument and affirm the hearing officer's decision and order.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Philip F. O'Neill
Appeals Judge