APPEAL NO. 010740

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 March 19, 2001. The hearing officer resolved the single disputed issue by determining that the respondent's (claimant) request for spinal surgery be approved. The appellant (carrier) appeals and requests the reversal of the hearing officer's decision on sufficiency grounds. There is no response from the claimant in the file.

DECISION

Affirmed.

The hearing officer did not err in concluding that the claimant's request for spinal surgery should be approved because his second-opinion doctor, Dr. G, concurred with the treating surgeon's, Dr. R, recommendations for surgical procedures. The evidence adduced at the hearing showed that Dr. R recommended that the claimant undergo a two-level laminectomy and two-level 360E fusion, with instrumentation. Dr. G's narrative read that he was "of the opinion" that the claimant's "lumbrosacral decompression with the possibility of stabilization" was "warranted."

We note here that, while the carrier argued that the latter option was marked, it was unclear on Dr. G's "Spineline Fax Response Form" whether he marked the "yes, I concur that surgery is indicated for this patient" option or the "yes, surgery is indicated, but I recommend a different procedure" option. However, Dr. G's narrative is clear that he concurs, per the Texas Administrative Code definition, with both the decompressive procedures [laminectomy] and the stabilization procedures [fusion] recommended by Dr. R. *See* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206(a)(13) (Rule 133.206(a)(13)). In addition, the carrier's reliance on Texas Workers' Compensation Commission Appeal No. 001625, decided August 23, 2000, is misplaced. In Appeal No. 001625, the Appeals Panel reversed and remanded for clarification a case where the purported "concurring" doctor only mentioned and agreed with one of two, discrete procedures[1] recommended by the claimant's surgeon.

Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.).

[1]In that case, the "concurring" doctor failed to reference the surgeon's recommended laminectomy and only addressed the propriety of the recommended dorsal column stimulator, two procedures the Appeals Panel determined had no "readily apparent connection."

This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disturb the contested findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

For these reasons, we affirm the decision and order of the hearing officer.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge