

APPEAL NO. 011298
FILED JULY 18, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 22, 2001. The hearing officer gave presumptive weight to the two nonconcurring opinions and held that the respondent (carrier) was not liable for the cost of spinal surgery.

The appellant (claimant) has appealed, arguing that he needs the surgery his treating doctor has recommended. The carrier responds that the hearing officer properly applied the rules relating to spinal surgery and his decision should therefore be affirmed.

DECISION

We affirm the hearing officer's decision.

In this case, the claimant has had two prior back surgeries for his 1997 injury. A third is recommended. The second opinion doctor chosen by the carrier did not agree with any surgery and said that the claimant's condition was not surgically correctable. The second opinion doctor chosen by the claimant agreed generally with the need for surgery but disagreed with the types of surgery proposed by the treating doctor. The treating doctor in turn responded to these reports and disputed the type of surgery that one of the second opinion doctor's said would be all that was required.

According to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206(a)(14) (Rule 133.206(a)(14)), a "nonconurrence" is a second opinion doctor's disagreement with the surgeon's recommendation that a particular type of surgery is needed. Presumptive weight must be given to the two opinions which have the same result. Rule 133.206(k)(4). The hearing officer properly gave these two opinions presumptive weight. In this case, whether the great weight of contrary medical opinion was against the two second opinion doctors'

nonconcurring opinions was a fact determination for the hearing officer to make. We cannot agree, after reviewing the record, that his decision was in error. We therefore affirm his decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge