

APPEAL NO. 011357
FILED JULY 19, 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 (CCH) was held on May 8, 2001. The hearing officer determined that the respondent (carrier) is not liable for the costs of spinal surgery for the appellant (claimant). The claimant has appealed the determination. The carrier has submitted a response, urging that the hearing officer's determination be affirmed.

DECISION

Affirmed.

This case has a convoluted history. The claimant was recommended for spinal surgery on September 3, 1999, by Dr. MM. The carrier-selected second opinion doctor, Dr. M, did not concur with the recommendation for surgery. The claimant was supposed to see a Dr. K, her choice of second opinion doctor, but missed the appointment because she was hospitalized for a kidney problem. The Texas Workers' Compensation Commission (Commission) notified the parties by letter dated November 10, 1999, that the carrier would not be responsible for the costs of spinal surgery at that time. The claimant was advised of the procedures for resubmission as described in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206(l) (Rule 133.206(l)), but did not follow those procedures or submit an appeal under Rule 133.206(k). The hearing officer did not err in determining that the carrier is not liable for the costs of spinal surgery for the appellant at this time.

The gap between November 10, 1999, and a letter from Dr. K dated October 19, 2000, which purports to agree with Dr. MM's recommendation for surgery, was not adequately explained by the claimant during the CCH. The claimant argues that there was good cause for her not attending her 1999 appointment with Dr. K, and that the resubmission process under Rule 133.206(l) was not necessary, but we do not agree. The claimant alludes to conversations between Commission employees and her doctors, and argues that she was following guidance from Commission employees concerning procedural matters. There is no basis in the rules for the guidance allegedly given. Attention by the parties, and by Commission employees, to the detailed rules pertaining to the spinal surgery second opinion process and established procedures would assure proper processing of cases and could avoid unnecessary delays.

The decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge