APPEAL NO. 011868
FILED SEPTEMBER 10, 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 April 3, 2001. The hearing officer determined that spinal surgery was not appropriate for the appellant (claimant) at that time and that the respondent (carrier) was not liable for the expenses of spinal surgery. The claimant appealed. In our initial decision of this case, we remanded to the hearing officer for further inquiry of the treating doctor and the second-opinion doctors, to determine exactly what types of surgery were being recommended and whether there was a concurrence with the type of surgery recommended. The hearing officer made further inquiry of the treating doctor and the second-opinion doctors, as directed by our decision. He determined that no further hearing was necessary, and that it would be sufficient to contact the doctors in writing. No response was submitted by any of the three doctors involved, and the hearing officer closed the record on July 6, 2001. The hearing officer then resolved the disputed issue by deciding that spinal surgery is not appropriate for the claimant at this time and that the carrier is not liable for the expenses of spinal surgery. The claimant appealed and the carrier responded.

DECISION

Affirmed.

We sought clarification from the doctors involved in the spinal surgery second-opinion process because we were not clear on what they each recommended. None of the doctors responded to the request from the hearing officer for clarification. The hearing officer did not err in determining that the carrier is not liable for the spinal surgery, as he found that there was no concurrence by two doctors for the same type of spinal surgery, as required by the definition of "concurrence" found in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206(a)(13) (Rule 133.206(a)(13)). Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the evidence for that of the hearing officer.

The hearing officer's decision and order on remand are affirmed.

The true corporate name of the insurance carrier is **RELIANCE NATIONAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

TIMOTHY J. MCGUIRE
633 NORTH STATE HIGHWAY 161, SUITE 200
IRVING, TEXAS 75038.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge