

APPEAL NO. 012121
FILED OCTOBER 25, 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 August 27, 2001. With respect to the single issue before him, the hearing officer determined that the respondent's (claimant) request for spinal surgery should be approved. In its appeal, the appellant (carrier) asserts that the great weight of the other medical evidence is contrary to the two opinions concurring in the proposed surgery. No response was filed.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's spinal surgery should be approved. Section 408.026(a)(1) provides that, except in a medical emergency, an insurance carrier is liable for medical costs related to spinal surgery only if before surgery, the employee obtains from a doctor approved by the carrier or the Texas Workers' Compensation Commission (Commission) a second opinion that concurs with the treating doctor's recommendation. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206(a)(13) (Rule 133.206(a)(13)) provides, in relevant part, that the term "concurrence" means "[a] second opinion doctor's agreement that the surgeon's proposed type of spinal surgery is needed. Need is assessed by determining if there are any pathologies in the area of the spine for which surgery is proposed (i.e., cervical, thoracic, lumbar, or adjacent levels of different areas of the spine) that are likely to improve as a result of the surgical intervention." Presumptive weight will be given to the two concurring opinions and they will be upheld unless the great weight of medical evidence is to the contrary. Rule 133.206(k)(4).

In its appeal, the carrier does not dispute that the recommending surgeon and the claimant's second opinion doctor concurred in the recommendation for spinal surgery. Rather, the carrier asserts that the great weight of the other medical evidence which establishes that the claimant did not have a pathology in the lumbar spine that required surgery is contrary to the concurring opinions. This was a question of fact for the hearing officer to resolve. See Texas Workers' Compensation Commission Appeal No. 960979, decided July 9, 1996 (Unpublished). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). Nothing in our review of the record demonstrates that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse it on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge