APPEAL NO. 012296
FILED NOVEMBER 5, 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 30, 2001. She determined that there was no concurrence by either second opinion doctor on the type of surgery recommended for the appellant (claimant). She also found that the respondent (carrier) was not liable for the cost of spinal surgery.

The claimant has appealed, arguing that not only is he in constant pain and in need of surgery, two doctors agree that he needs surgery. He argues about mistakes of fact he says are in the records or decision. The carrier responds that the decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

The crux of the case is that the claimant's second opinion doctor agrees that the claimant needs cervical surgery. However, he expressly disagreed with one proposed procedure, a corpectomy, or surgery at all at level C4-5. He stated that a completely adequate decompression could be achieved at "C7-8." The carrier's second opinion doctor did not agree with the need for surgery at all. The claimant argues that the reference to "C8" undermines the accuracy of this second opinion doctor's opinion. He further argues that the carrier's second opinion doctor did not perform many of the examinations that are itemized in his report.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206 (Rule 133.206), regarding the spinal surgery second opinion process, defines "concurrence" in subsection (a)(13) as:

> 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. Types of spinal surgery include but are not limited to: stabilizing procedures (e.g. fusions); decompressive procedures (e.g. laminectomy); exploration of fusion/removal of hardware procedures; and procedures related to spinal cord stimulators.

Rule 133.206(a)(14) defines "nonconcurrence" as:

> A second opinion doctor's disagreement with the surgeon's recommendation that a particular type of spinal surgery is needed.

Rule 133.206(k)(4) provides:

> Of the three recommendations and opinions (the surgeon's, and the two second opinion doctors'), presumptive weight will be given to the two which had the same result, and they will be upheld unless the great weight of medical evidence is to the contrary. The only opinions admissible at the hearing are the recommendation of the surgeon and the opinions of the two second opinion doctors.

We have reviewed this matter and it appears that the hearing officer correctly applied the rules in accordance with our previous decisions. We accordingly affirm the decision and order.

The true corporate name of the insurance carrier is **INTERNATIONAL SOLUTIONS LLC** and the name and address of its registered agent for service of process is

KATHLEEN THOMPSON, V.P.
2000 E. LAMAR BLVD, SUITE 100
ARLINGTON, TEXAS 76006.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge