

APPEAL NO. 012394
FILED NOVEMBER 21, 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 September 18, 2001. The hearing officer resolved the disputed issue before her by determining that the respondent's (claimant) request for spinal surgery should be approved. The appellant (self-insured) agrees that the claimant needs surgery but disagrees with the recommended procedure. The self-insured seeks a continuance of the CCH to allow it time to develop evidence and prove its contention that there may have been fraud or collusion between the two concurring doctors. There is no response from the claimant in the file.

DECISION

Affirmed.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206 (Rule 133.206) establishes a spinal surgery, second opinion process to be followed if spinal surgery is disputed. Under this procedure, both the claimant and the self-insured choose a second opinion doctor from a list of surgeons provided by the Texas Workers' Compensation Commission (Commission). A determination is made by the Commission as to whether or not the second opinion doctors concur with the recommendation for surgery. Rule 133.206(a)(13) defines "concurrence" as follows:

Concurrence - 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 hardware 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(k)(4) provides as follows, if a spinal surgery determination is appealed to a CCH:

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 the 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.

In the present case, it is undisputed that the claimant's surgeon and her second

opinion doctor concurred on the need for and type of surgery. Both at the hearing and on appeal the self-insured has raised serious allegations of possible collusion between the claimant's surgeon and her second opinion doctor. The self-insured asserts that this case should be continued by the Commission to allow the self-insured time to develop evidence in support of its allegations.

We have carefully considered the self-insured's unsupported allegations of possible fraud or collusion by the claimant's surgeon and second opinion doctor and decline to remand this case. As an appellate reviewing tribunal, we are limited to the record before us and the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We are satisfied that the evidence sufficiently supports the hearing officer's determination that the claimant's request for spinal surgery should be approved.

The true corporate name of the insurance carrier is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**MG
SUPERINTENDENT
ADDRESS
(CITY) TEXAS, (ZIP CODE).**

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge