APPEAL NO. 020587
FILED APRIL 18, 2002

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 February 27, 2002. The hearing officer resolved the disputed issue before him by determining that the respondent's (claimant) request for spinal surgery should be approved. The appellant (carrier) appealed on sufficiency grounds, and asserted evidentiary error. The claimant responded, urging affirmance.

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 hearing officer erred in not admitting a report from its peer review doctor and that the great weight of the other medical evidence is contrary to the concurring opinions. The hearing officer did not err in excluding the medical report from the carrier's peer review doctor. Rule 133.206(k)(4) is clear and unambiguous. It provides, in relevant part, that the only opinions admissible at the hearing are the recommendations of the surgeon and the opinions of the two second opinion doctors.

Whether or not the concurring opinions are against the great weight of the medical evidence is 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). As the trier of fact, the hearing officer 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 determination that the great weight of the medical evidence is not contrary to the two opinions concurring in the need for spinal surgery 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 that determination, or the determination that the spinal surgery should be approved, on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **GREAT AMERICAN INSURANCE COMPANY OF NEW YORK** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Edward Vilano
Appeals Judge