

APPEAL NO. 021331
FILED JULY 11, 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 April 29, 2002. The appellant (carrier) appeals the hearing officer's determination that the respondent's (claimant) request for spinal surgery be remanded to the Spinal Surgery Division of the Texas Workers' Compensation Commission (Commission). There is no response from the claimant contained in our file.

DECISION

Affirmed as modified.

The carrier contends that the hearing officer abused his discretion by remanding this case back to the Spinal Surgery Division of the Commission. In regard to the second opinion process, the hearing officer stated that, "As the issue is 'Whether Claimant's spinal surgery should be approved', the correct process has not taken place and the necessary opinions are not in existence to render an opinion under the guidance of the [1989] Act or the Rules." The hearing officer remanded the case to the Spinal Surgery Division, apparently for a second opinion to be obtained concerning a spinal surgery that has already taken place.

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 Commission a second opinion that concurs with the treating doctor's recommendation." (Emphasis added). Because there was not a second opinion prior to the surgery as mandated by Section 408.026(a)(1), that section no longer can be applied and a remand to the Spinal Surgery Division of the Commission for the second opinion process is inappropriate. However, we note that Section 408.026(a)(3) provides that an insurance carrier is liable for medical costs related to spinal surgery if the Commission determines that extenuating circumstances exist and orders payment for surgery. Accordingly, we modify that portion of the hearing officer's determination that can be interpreted to indicate that this case is being remanded back to the Spinal Surgery Division of the Commission for the second opinion process because that process is no longer available, because the surgery has already taken place.

The hearing officer's decision and order are affirmed as modified.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750 COMMODORE 1
AUSTIN, TEXAS 78701.**

Roy L. Warren
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge