

APPEAL NO. 030621
FILED APRIL 29, 2003

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 12, 2003, with the record closing on February 14, 2003. The hearing officer determined that the Independent Review Organization's (IRO) decision, finding that the respondent's (claimant) proposed surgery is not medically necessary, is not supported by a preponderance of the evidence. The appellant (carrier) appeals this decision. The appeal file contains no response from the claimant.

DECISION

Affirmed.

The carrier asserts that the hearing officer's decision is against the great weight and preponderance of the evidence and that she committed legal error in applying a "preponderance of the evidence" standard, as opposed to a "great weight of the other medical evidence" standard, as is applicable in cases where a designated doctor's opinion is afforded presumptive weight. We have previously addressed this issue of IRO "presumptive weight" versus designated doctor's report "presumptive weight" in Texas Workers' Compensation Commission Appeal No. 021958-s, decided September 16, 2002. In that case, upon review of the "presumptive weight" provision in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE, § 133.308(v) (Rule 133.308(v)), the Appeals Panel determined that it is an evidentiary rule creating a rebuttable presumption, as distinguished from a conclusive presumption, as is the case with the designated doctor rule. As explained in Appeal No. 021958-s, the consequence of this being a rebuttable presumption, as opposed to a conclusive presumption, is that "its effect is to shift the burden of producing evidence to the party against whom it operates The evidence is then evaluated, as it would be in any other case." In this case, the hearing officer pointed to the evidence from the treating doctor, who recommended surgery, and determined that the preponderance of the evidence was contrary to the IRO decision. Nothing in our review of the record indicates that the hearing officer's decision requires reversal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **ARCH INSURANCE COMPANY** 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.**

Chris Cowan
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Elaine M. Chaney
Appeals Judge