

APPEAL NO. 030921
FILED MAY 19, 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 March 14, 2003, with (hearing officer 1) presiding. The hearing officer determined that the Independent Review Organization's (IRO) decision against spinal surgery is supported by a preponderance of the evidence. In her appeal, the appellant (claimant) argues that a preponderance of the evidence does not support the IRO's decision and, thus, she asks that we determine that the carrier is liable for the cost of spinal surgery. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

Initially, we note that on May 14, 2003, the Director of Hearings, signed an Order on Motion to Correct Clerical Error, which was to be effective on March 20, 2003. In that Order, the hearing officer's decision and order was corrected to include the signature of hearing officer 1, who is the hearing officer that presided over the hearing rather than the signature of (hearing officer 2), whose signature appears on the decision and order originally submitted to the parties.

In her appeal, the claimant argues that the hearing officer erred in giving presumptive weight to the IRO's determination against spinal surgery. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §133.308 (Rule 133.308) provides for medical dispute resolution by IROs including prospective medical disputes of the medical necessity of proposed spinal surgery for which the initial dispute resolution request was filed on or after January 1, 2002. Rule 133.308(o)(5) provides that an IRO decision is deemed to be a decision and order of the Texas Workers' Compensation Commission; and Rule 133.308(v) provides that "[i]n all appeals from reviews of prospective or retrospective necessity disputes, the IRO decision has presumptive weight." We have previously addressed the "presumptive weight" provision of Rule 133.308(v) and determined that it is an evidentiary rule which creates a rebuttable presumption, as distinguished from a conclusive presumption, that the IRO decision is the correct decision which should be adopted by the hearing officer and the Appeals Panel unless rebutted by contrary evidence. See Texas Workers' Compensation Commission Appeal No. 021958-s, decided September 16, 2002. In the instant case, the hearing officer concluded that the decision of the IRO was supported by a preponderance of the evidence and thus was entitled to presumptive weight. Based upon our review of the record and decision in this case, we find no error in the hearing officer's having done so.

The hearing officer's decision and order as corrected by the Director of Hearings to include the signature of the hearing officer who presided at the hearing is affirmed.

The true corporate name of the insurance carrier is **AMCOMP ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 330
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge