

APPEAL NO. 032359
FILED OCTOBER 21, 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 August 6, 2003. The hearing officer determined that the decision of the Independent Review Organization (IRO), denying the respondent's (claimant) request for spinal surgery, is not supported by a preponderance of the evidence. The appellant (carrier) appealed, asserting that the wrong legal standard was used and that the decision is against the great weight and preponderance of the evidence. The file does not contain a response from the claimant.

DECISION

Affirmed.

The carrier contends that the Appeals Panel misapplied Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE, § 133.308(v) (Rule 133.308(v)), regarding the standard of review in an appeal of the IRO's decision, when we held that the rule creates a rebuttable presumption that the IRO's decision is the correct decision which should be adopted by the hearing officer and the Appeals Panel unless rebutted by the preponderance of the evidence, as distinguished from a conclusive presumption which must be overcome by the great weight of other medical evidence. See Texas Workers' Compensation Commission Appeal No. 021958-s, decided September 16, 2002. We decline to revisit our decision in that case.

The hearing officer did not err in determining that the IRO's decision, denying the claimant's request for spinal surgery, is not supported by a preponderance of the evidence. This determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We cannot conclude that the hearing officer's determination is 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).

The hearing officer's decision and order are affirmed.

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

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Edward Vilano
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge