

APPEAL NO. 032751
FILED DECEMBER 9, 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 September 23, 2003. The hearing officer determined that the Independent Review Organization's (IRO) decision that the respondent's (claimant) proposed spinal surgery is not medically necessary is against the preponderance of the evidence. The hearing officer rendered a decision that the claimant's proposed spinal surgery is medically necessary. The appellant (carrier) appeals, contending that the hearing officer's determination is against the great weight and preponderance of the evidence. There is no response from the claimant contained in our file.

DECISION

Affirmed.

The carrier asserts that the hearing officer's decision is against the great weight and preponderance of the evidence, asserting that the decision of the IRO carries presumptive weight. We have previously addressed the 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, *supra*, 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 surgeon, 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 **PACIFIC EMPLOYERS INSURANCE COMPANY/ACE USA** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN, ACE USA
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200
IRVING, TEXAS 75063.**

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge