

APPEAL NO. 033246  
FILED FEBRUARY 5, 2004

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 November 13, 2003. The hearing officer resolved the disputed issue by deciding that the Independent Review Organization's (IRO) decision is supported by a preponderance of the evidence. Appellant (carrier) appealed, contending that the evidence shows the surgery is not medically necessary. The file does not contain a response from respondent (claimant).

DECISION

We affirm.

This case involves a dispute over the medical necessity of proposed spinal surgery. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.308 (Rule 133.308) pertains to medical dispute resolution by IROs. See Texas Workers' Compensation Commission Appeal No. 021958-s, decided September 16, 2002, regarding application of a preponderance of the evidence standard. Carrier contends that the proposed fusion was not necessary and asserts that medical reports from required medical evaluation (RME) and peer review doctors were ignored. Claimant's treating doctor recommended that the claimant undergo a 360-degree spinal fusion at L4-5. The IRO decided that the proposed fusion is medically necessary to treat the claimant's condition. Two RME doctors opined that the claimant is not a surgical candidate. A carrier peer review doctor stated that fusion with instrumentation was not justified. Reports of diagnostic tests were in evidence. The hearing officer determined that the IRO decision is supported by a preponderance of the evidence. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Although there is conflicting evidence in this case, we conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Edward Vilano  
Appeals Judge