

APPEAL NO. 033311
FILED FEBRUARY 17, 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 October 22, 2003. The hearing officer resolved the sole issue before him by determining that the Independent Review Organization's (IRO) decision in favor of the proposed spinal surgery of appellant (claimant) is not supported by a preponderance of the evidence. Claimant appeals the hearing officer's determination on sufficiency of the evidence grounds. Respondent (self-insured) responded, urging affirmance.

DECISION

We affirm.

The applicable law and our appellate standard of review are discussed in Texas Workers' Compensation Commission Appeal No. 021958-s, decided September 16, 2002. Claimant contends that the "totality of the documented evidence provides a preponderance of evidence in support of the IRO." In the IRO report, it stated that the "Rationale" for the decision was, "Discogenic pain is well described in the literature as a cause of low back pain. IDET has been shown to yield satisfactory outcomes in carefully selected patients. Patient selection relies on, among other things, discography with concordant pain reproduction at the involved level with a control level that does not reproduce concordant pain. From the clinical documentation, [claimant] would be a candidate for an IDET procedure."

In his Statement of the Evidence, the hearing officer set out, in great detail, the conflicting medical evidence. The hearing officer concluded that the decision and order of the IRO was not supported by a preponderance of the evidence, and specifically stated why. We have reviewed the complained-of determination and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is supported by the record and is not 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). We also perceive no error in the hearing officer's determination that conservative treatment failed.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**JG
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge