

APPEAL NO. 040061  
FILED FEBRUARY 27, 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 December 16, 2003, with the record closing on December 17, 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. The appellant (claimant) appealed, arguing that the preponderance of the evidence establishes the medical necessity of cervical spine surgery. The claimant additionally argues that the IRO reviewer failed to set forth any description of his or her qualifications, other than that he or she is board certified in neurological surgery and failed to describe any screening criteria that he or she utilized to determine whether the proposed surgery was necessary. The respondent (carrier) responded, urging affirmance. The carrier contends that the evidence supports the hearing officer's decision and that the claimant's procedural arguments in regard to the IRO report are without merit. There is a further submission from the claimant, replying to the carrier's response.

DECISION

Affirmed.

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. We find no merit in the claimant's contention that the IRO report is flawed because the IRO reviewer did not set forth any description of his or her qualifications, other than that he or she is board certified in neurological surgery. Rule 133.308(p)(1)(C) provides that the IRO must include a description of the qualifications of the reviewing physician or provider. However, as noted by the claimant in the instant case, the reviewer is identified as a physician who is board certified in neurological surgery. The claimant does not point to any authority which would require the IRO reviewer to further detail his qualifications. Nor do we find merit in the claimant's contention that the IRO reviewer failed to provide a description and source of the screening criteria used in making a determination regarding spinal surgery. The IRO details the claimant's relevant medical history and the reviewer discusses the studies he reviewed and sets forth his rationale in reaching a determination that the requested anterior cervical discectomy and fusion at C5-6 and C6-7 with allograft cone spacers and anterior plate instrumentation should be denied.

The hearing officer did not err in determining that the IRO's decision, denying the claimant's request for spinal surgery, is 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)). In view of the evidence, 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).

We affirm the decision and order of the hearing officer.

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

**MR. BOB KNOWLES  
5205 NORTH O'CONNOR BOULEVARD  
IRVING, TEXAS 75039.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Edward Vilano  
Appeals Judge