

APPEAL NO. 040545  
FILED APRIL 29, 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 February 11, 2004. The hearing officer determined that the decision of the Independent Review Organization (IRO), finding that the proposed surgery for respondent (claimant) is not medically necessary, is not supported by a preponderance of the evidence. Appellant (carrier) appeals this decision. The appeal file contains no response from claimant.

DECISION

We affirm.

Dr. S recommended that claimant undergo spinal surgery. On August 8, 2003, the decision of the IRO was that the proposed surgery is not medically necessary. The hearing officer determined that the IRO decision is not supported by a preponderance of the evidence. The applicable law and our appellate standard of review are discussed in Texas Workers' Compensation Commission Appeal No. 021958-s, decided September 16, 2002. The hearing officer's decision sets forth the "Rationale" or basis for the IRO decision, and we will not repeat it here. Briefly, the rationale did state that the physician reviewer who made the decision "indicated the requested service is based on results of a CT discography. [The physician reviewer] explained that the efficacy of correctly identifying the pain generator with a CT discography is limited." It was also stated that the rationale behind the preoperative plan was very limited and did not support the decision to proceed with surgery. It was reported that one peer review doctor stated that a clear surgical problem was not demonstrated, the EMG report had not been included, and the documentation did not support the medical necessity of the proposed surgery. It was reported that another peer review was done for carrier and that the peer review doctor agreed that there was inadequate documentation to support the requested services, that there were no recent studies, that the pain generator had not been identified, and that the CT scan showed a solid fusion, but that acute and chronic radiculopathy was shown by an NCV study. These peer review reports were not included in the record.

Claimant's medical records showed that conservative measures, such as physical therapy and facet injections, had been undertaken before surgery was recommended. Dr. D stated that pain generators had been identified. Dr. S testified that he did not base his surgical recommendation on the results of the CT discography alone, but on the results of the CT myelogram and other tests.

The hearing officer concluded that the decision and order of the IRO was not supported by a preponderance of the evidence. 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 affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**TIMOTHY J. McGUIRE  
633 NORTH STATE HIGHWAY 161, SUITE 200  
IRVING, TEXAS 75038.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge