

APPEAL NO. 041354
FILED JULY 16, 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 May 18, 2004. The hearing officer determined that the Independent Review Organization's (IRO) decision that spinal surgery is reasonable and necessary treatment for the respondent's (claimant) spinal injury is supported by a preponderance of the evidence and that the request for spinal surgery is approved. In its appeal, the appellant (carrier) argues that the hearing officer erred in giving presumptive weight to the IRO's decision approving spinal surgery and asks that we determine that it is not liable for the cost of the proposed spinal surgery. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

In its appeal, the carrier argues that the hearing officer erred in giving presumptive weight to the IRO's determination in favor of spinal surgery. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.308 (Rule 133.308) provides for medical dispute resolution by IROs including prospective medical disputes of the medical necessity of proposed spinal surgery for which the initial dispute resolution request was filed on or after January 1, 2003. Rule 133.308(p)(5) provides that an IRO decision is deemed to be a decision and order of the Texas Workers' Compensation Commission; and Rule 133.308(w) provides that "[i]n all appeals from reviews of prospective or retrospective necessity disputes, the IRO decision has presumptive weight." We have previously addressed the "presumptive weight" provision of Rule 133.308(w) and determined that it is an evidentiary rule which creates a rebuttable presumption, as distinguished from a conclusive presumption, that the IRO decision is the correct decision which should be adopted by the hearing officer and the Appeals Panel unless rebutted by contrary evidence. See Texas Workers' Compensation Commission Appeal No. 021958-s, decided September 16, 2002. In the instant case, the hearing officer concluded that the decision of the IRO was supported by a preponderance of the evidence and thus was entitled to presumptive weight. Based upon our review of the record, we find no error in the hearing officer's having done so.

The hearing officer's decision and order is affirmed.

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

**GERARD BUTLER
2001 BRYAN STREET, SUITE 3400
DALLAS, TEXAS 75201-3068.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge