

APPEAL NO. 042428
FILED NOVEMBER 18, 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 August 31, 2004. The hearing officer resolved the disputed issues by deciding that the independent review organization (IRO) determination is reversed and a new decision rendered that the proposed surgery is medically necessary. The appellant (self-insured) appealed, disputing the hearing officer's decision. The respondent (claimant) responded, urging affirmance.

DECISION

Affirmed as reformed.

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.

The self-insured correctly points out that the hearing officer erroneously states in Finding of Fact No. 6 that the carrier requested a decision from the IRO when in fact the evidence reflects that the claimant is listed as the requestor. We reform Finding of Fact No. 6 to correct this error. The self-insured contends that the decision is not supported by the preponderance of the evidence and contends that the hearing officer appears to be assuming a doctor's role. The self-insured contends that the claimant failed to meet his burden of proof.

Whether the IRO's decision was supported by a preponderance of the evidence was a factual question 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 the instant case, the hearing officer was persuaded by the medical reports in evidence that the requested spinal surgery is medically necessary treatment and specifically listed the reasons he found that the preponderance of the evidence is contrary to the report of the IRO. Nothing in our review of the record indicates that the hearing officer's decision 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 as reformed.

The true corporate name of the insurance carrier is **(self-insured governmental entity)** and the name and address of its registered agent for service of process is

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

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge