APPEAL NO. 023134
FILED JANUARY 31, 2003

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 November 20, 2002. The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) request for spinal surgery is medically necessary and is approved. The appellant (self-insured) appealed, arguing that the hearing officer erred by determining that the decision and order of the Independent Review Organization (IRO) is not supported by a preponderance of the evidence. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The self-insured argues that the hearing officer's determination was in error because the hearing officer misstated the opinion of the IRO; the claimant failed to complete a sufficient course of conservative therapy; and the claimant's second opinion doctor based his conclusion that surgery is medically necessary on the erroneous assumption that conservative treatment was attempted and failed. The decision portion of the IRO states that: "The reviewer agrees with the determination of the insurance carrier. The reviewer is of the opinion that *without a second opinion* from a neurosurgeon at the time of the evaluation, which is usually required for spinal surgery, the requested procedure is not medically necessary at this point in the case." [Emphasis added.] The IRO noted in a section of the letter entitled rationale for decision that "[w]hile the decision for surgery was based on objective neurological findings, intractable pain with radiation to the extremity, and a positive MRI scan, this case would have been better documented and stronger had the patient had a second opinion. It would have been helpful to have documented by electro-diagnostic studies some nerve root irritation." Finally, the reviewer noted "at this point in time, approximately five months since her hospitalization, she may have had a more than adequate trial of conservative treatment and her symptomatology should be re-evaluated." From this evidence, we cannot agree that the hearing officer misstated the IRO and the basis for its decision.

In a letter dated May 28, 2002, Dr. W, the doctor recommending the claimant's surgery, stated that "there is no significant data to suggest that EMG/nerve conduction studies would benefit her" and that "there is not scientifically valid data to suggest epidural steroid injections or oral steroid agents would help her." Dr. W went on to note that "there is clearly data to suggest that the longer the nerve is compressed and the longer the patient suffers from neurological deficit, the greater their chance of failure of surgical management. That is to say that there is valid scientific data to suggest that by delaying her surgery, her employer, the workers' comp system, and all other responsible parties are putting her nerve at risk." Dr. P, who provided a second opinion

on spinal surgery dated November 1, 2002, some six months after her injury, concluded that the claimant had a "C6-7 disc herniation, symptomatic with persistent left C7 radiculopathy, refractory to conservative treatments. I agree with C6-7 anterior cervical discectomy."

In Texas Workers' Compensation Commission Appeal No. 021958-s, decided September 16, 2002, we decided that the hearing officer did not err in applying a preponderance of the evidence standard in determining that the IRO decision is not supported by the evidence. In this instance, the hearing officer pointed to the evidence from the surgeon recommending surgery and the second opinion doctor and determined that it was the preponderance of the evidence contrary to the IRO decision that the requested surgery was not medically necessary. Our review of the record does not reveal that the hearing officer's determination in that regard is so contrary to the great weight of the evidence as to compel its reversal on appeal. Accordingly, we affirm the determination that the proposed surgery is medically necessary and is approved.

The hearing officer's decision and order are affirmed.

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

MANAGER
(ADDRESS)
(CITY), TEXAS (CITY).

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Terri Kay Oliver
Appeals Judge