

APPEAL NO. 032583
FILED NOVEMBER 20, 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 (CCH) was held on August 28, 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 (carrier) appealed, contending that the IRO decision is flawed because it cannot be determined whether or not the IRO had access to or reviewed medical reports and studies which indicated that surgery is not warranted. There is no response in our file from the respondent (claimant).

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. To the extent that the carrier is arguing that the IRO decision is flawed because it cannot be determined whether or not the IRO had access to or reviewed medical reports and studies which indicated that surgery is not warranted, we point out that the report contains the statement that: "[The IRO] has performed an independent review of the proposed care to determine if the adverse decision was appropriate. In performing this review, all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed." Rule 133.308(k) provides that the documentation to be provided to the IRO "shall include: (1) Any medical records of the injured employee relevant to the review; (2) Any documents used by the utilization review agent or carrier in making the decision, to be reviewed by the IRO; and (3) Any supporting documentation submitted to the utilization review agent or carrier." The carrier has, or at least shares in, the responsibility to provide all relevant records to the IRO, and the IRO specifically stated that it had reviewed all the documentation provided to it to perform its review function. We reject the carrier's argument that the review was flawed for the reason stated.

The claimant's treating doctor and the referral surgeon have recommended that the claimant undergo spinal surgery. The IRO decided that the proposed surgery is medically necessary to treat the claimant's condition. The CCH record contains several exhibits, including reports from a carrier peer review doctor and a required medical examination doctor, disagreeing with the recommended spinal surgery. Reports of diagnostic tests were in evidence. The hearing officer determined that the IRO decision is supported by a preponderance of the evidence. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Although there is

conflicting evidence in this case, we conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge