

APPEAL NO. 090526  
FILED JUNE 22, 2009

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 March 10, 2009. The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) compensable injury sustained on \_\_\_\_\_, extends to a stroke. The appellant (carrier) appealed the hearing officer's extent-of-injury determination. The appeal file does not contain a response from the claimant.

**DECISION**

Reversed and rendered.

It was undisputed that the claimant suffered a work-related injury to his mid-back on \_\_\_\_\_, and that on April 25, 2008, the claimant underwent surgery to stabilize a fractured vertebra, T7. The surgery was performed by (Dr. L). In an unappealed finding of fact, the hearing officer found that the claimant was diagnosed with a stroke. The evidence reflects that the claimant was admitted to the emergency room on May 19, 2008, for a complaint of a possible stroke.<sup>1</sup> The hearing officer found that the claimant's stroke arose out of treatment for the compensable injury.

**EXTENT OF INJURY**

An injured employee who has sustained a compensable injury is not limited to compensation of merely the compensable injury itself if the injury, or any proper or necessary treatment of the injury, causes other injuries in addition to the original compensable injury. See Western Cas. & Sur. Co. v. Gonzales, 518 S.W.2d 524 (Tex. 1975); Maryland Casualty Co. v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968), writ ref'd n.r.e. *per curiam*, 432 S.W.2d 515 (Tex. 1968). The question to be resolved in an extent-of-injury issue is whether the claimed condition is causally related to or is a part of the compensable injury. Appeals Panel Decision (APD) 971725, decided October 17, 1997. Where the matter of causation of the claimed injury is beyond common knowledge or experience, expert evidence to a reasonable degree of medical probability is required. See Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.).

In APD 002244, decided October 27, 2000, the Appeals Panel affirmed the hearing officer's determination that the medical evidence was insufficient to prove that the claimant's stroke was heat related or that it was other than idiopathic in nature. In that case, the evidence reflected that the claimant was working in an extremely hot area and had a stroke on his second day of work. There was no explanation from an

---

<sup>1</sup> In the Background Information section of the decision, the hearing officer stated that the "[c]laimant was admitted to the hospital because doctors believed [c]laimant might have had a cerebrovascular accident (CVA) or transient ischemic attack (TIA), both of which are strokes."

attending doctor as to how the stroke or its effects were made worse than they might have been nor a statement that the work caused the stroke within reasonable medical probability. In that case, citing Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980) and Peques, *supra*, the Appeals Panel held that “[w]e believe that either a cause or aggravation of a stroke in this case involved matters beyond common experience, and medical evidence must be submitted which establishes the connection as a matter of reasonable medical probability, as opposed to a possibility, speculation, or guess.”

In the instant case, Dr. L recorded the claimant's wife's complaints in notes dated April 30, 2008, that the claimant was confused, disoriented, and lightheaded following the April 25, 2008, surgery. Dr. L noted that “I believe this to be related to the anesthesia he got for the [surgery].” In his May 5, 2008, medical records, Dr. L documented the claimant's complaints regarding short term memory, confusion, and symptoms currently were less frequent than after surgery and that the claimant was oriented to person and place but not time. The claimant was referred to physical therapy following surgery which he attended on May 19, 2008. The claimant testified that he could not remember what happened that day nor was there any evidence as to what the claimant was doing at physical therapy at the time of the onset of symptoms. An emergency room report dated May 19, 2008, documented that the claimant was at physical therapy when there was an episode of slurred speech, facial drooping, and weakness in his right upper and lower extremities. The claimant was transported and admitted to the hospital for a possible stroke.

While Dr. L does relate lightheadedness and confusion to the anesthesia received for the claimant's spinal surgery, he does not specifically relate these symptoms to a stroke suffered by the claimant nor does Dr. L explain how exposure to anesthesia could cause a stroke. Additionally, the claimant did not seek medical treatment for a possible stroke until May 19, 2008. However, Dr. L related the symptoms of confusion and lightheadedness to anesthesia on April 30, 2008. Dr. L's medical records do not show a causal connection between the compensable injury and the stroke to a reasonable medical probability by expert medical evidence.

In an admission record dated May 19, 2008, the admitting physician, (Dr. B), noted that the claimant presented to the emergency room on that date with complaints of ataxia. Dr. B noted a history of (spinal surgery), a history of hypertension, and a history of questionable myocardial infarction (heart attack). Dr. B indicated that a computerized tomography scan report showed a left CVA, age unknown. Dr. B assessed the claimant with CVA following (surgery); a history of myocardial infarction; hypertension with left ventricular hypertrophy by electrocardiogram; and smoker. In an undated report, (Dr. S), a consulting doctor, noted that the claimant was admitted to the hospital “status post confusion spell that has been going on since he had [surgery] done on his lower thoracic or upper lumbar spine, status post fractures.” Dr. S noted symptoms of confusion, lightheadedness, blurred vision, and numbness in the upper and lower extremity, which the claimant did not have prior to his surgery of April 25, 2008. Dr. S's impression was a differential diagnosis of posterior circulation stroke

(TIA) versus epileptic etiology. Upon his May 28, 2008, discharge from the hospital, the claimant's final diagnoses included stroke (CVA) secondary to left carotid stenosis, basilar artery stenosis, history of T7 compression fracture and surgery, hypertension, and smoker. The medical reports of Dr. B and Dr. S do not show a causal connection between the compensable injury and the stroke to a reasonable medical probability by expert medical evidence because neither doctor explained how the claimant's April 25, 2008, spinal surgery or the follow-up treatment could cause the claimant to suffer a stroke.

At the CCH, the claimant argued that his stroke was caused either by the treatment for his \_\_\_\_\_, compensable injury (the April 25, 2008, spinal surgery) or by his post-surgery physical therapy. The claimant had the burden to prove that the compensable injury of \_\_\_\_\_, extends to a stroke by expert evidence to a reasonable medical probability. The fact that the proof of causation may be difficult does not relieve the claimant of the burden of proof. APD 93665, decided September 15, 1993. The hearing officer's determination that the compensable injury sustained on \_\_\_\_\_, extends to a stroke is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Accordingly, we reverse the hearing officer's determination that the compensable injury sustained on \_\_\_\_\_, extends to a stroke and we render a new decision that the compensable injury sustained on \_\_\_\_\_, does not extend to a stroke.

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

**RUSSELL OLIVER, PRESIDENT  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723.**

---

Cynthia A. Brown  
Appeals Judge

CONCUR:

---

Veronica L. Ruberto  
Appeals Judge

---

Margaret L. Turner  
Appeals Judge