

APPEAL NO. 100472
FILED JUNE 4, 2010

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 24, 2010. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury on _____; (2) the compensable injury of _____, includes left foot drop, peroneal nerve dysfunction across the left knee, lumbar strain and lumbar radiculopathy; and (3) the claimant sustained disability from August 15, 2009, continuing through the date of the CCH.

The appellant (carrier) appealed all three of the issues asserting there was no, or insufficient evidence of causation of the injury and no, or insufficient medical evidence to support the hearing officer's decision. The claimant responded, urging affirmance.

DECISION

Reversed and rendered.

The claimant testified that on _____, he was sitting in his truck for an extended period of time waiting on his next load assignment when he noticed his left toe and left foot going numb. The evidence supports that the claimant stepped out of his truck and his left foot twisted when he placed it on the pavement. The claimant testified that he is a diabetic and that he does not know how he injured himself. The claimant reported his injury but was told by the dispatcher to continue driving. The claimant first sought medical attention at a hospital emergency room (ER) in (State) on August 14, 2009.

An ER report dated August 14, 2009, recites a history that the claimant noticed numbness in his left big toe and foot on _____, and has a clinical impression of "[p]eripheral nerve entrapment. (Foot drop (left))." The ER report notes that the injury to the left foot was not caused by a direct blow or crush injury. Hospital instructions dated August 15, 2009, state that the claimant had been evaluated for "[n]europathy" and included information on foot drop. The information states there are many different causes for foot drop including diabetes.

The claimant returned to Texas and began treating with (Dr. B). Dr. B, in a report dated August 20, 2009, recites the history of the claimant sitting in the truck with his legs crossed for a long period of time, numbness of the left toe, and the ER diagnosis of positional neuropathy. Dr. B diagnosed lumbar radiculopathy and lumbar strain. In a report dated August 25, 2009, Dr. B notes that the claimant reported that at some time prior to _____, the truck the claimant was driving had a low "air bag" in the suspension system for the truck's cab, causing the claimant to be "bounced around more than usual." Dr. B again assessed lumbar radiculopathy and lumbar sprain. A lumbar MRI performed on August 26, 2009, had an impression of minimal to mild disc

bulge at L4-5 with mild, left greater than right, neural foraminal narrowing. The MRI also noted a lipoma (a benign tumor usually composed of mature fat cells) from mid L2 down to the L4-5 disc level.

The claimant filed an Employee's Claim for Compensation for a Work-Related Injury or Occupational Disease (DWC-41) dated August 25, 2009, on August 31, 2009, describing the cause of the injury as "numbness in foot, pain in lower back, due to sitting [too] long waiting on freight." (Dr. F), a referral physician, in a report dated November 17, 2009, notes a history of "sudden onset after sitting in his truck, leaning his leg. [H]e also crosses legs a lot." Dr. F's assessment is injury of the peroneal nerve "likely compressive, by history and likely mechanism." An EMG performed on November 17, 2009, shows an abnormal study with "evidence for peroneal nerve dysfunction across the knee on the left."

COMPENSABLE INJURY AND EXTENT OF INJURY

There is no medical report or evidence to establish how sitting in the truck, with crossed legs or stepping out of the truck would cause left foot drop, peroneal nerve dysfunction across the left knee, lumbar strain and lumbar radiculopathy. (Dr. C) a carrier peer review doctor, in reports dated August 27, 2009, January 6, 2010, and January 22, 2010, stated that sitting in a truck could not result in radiculopathy or neuropathy that would cause foot drop. Dr. C opined that the claimant's foot drop was possibly related to the lipoma and would not be related to his work incident.

The cause and existence of foot drop, peroneal nerve dysfunction across the left knee, lumbar strain and lumbar radiculopathy in this situation, are matters beyond common experience and medical evidence should be submitted which establishes the causal connection as a matter of reasonable medical probability. See City of Laredo v. Garza, 293 S.W.3d 625 (Tex. App-San Antonio 2009, no pet.) citing Guevara v. Ferrer, 247 S.W.3d 662 (Tex. 2007). The fact that the proof of causation may be difficult does not relieve the claimant of the burden of proof. In this case, although doctors have diagnosed the various conditions, none have given an opinion how sitting in a truck, with legs crossed, can cause peroneal nerve dysfunction or foot drop. Conversely, the carrier's peer review doctor opined the cause of those conditions was something other than sitting in the truck or stepping out on the pavement.

The hearing officer recites that a fair reading of the medical records, diagnostic studies and the claimant's testimony show the claimant sustained a compensable injury on _____, and the compensable injury includes the claimed conditions of left foot drop, peroneal nerve dysfunction across the left knee, lumbar strain and lumbar radiculopathy. While the claimant may well have those conditions there is no medical (or testimonial) evidence how and whether they were caused by sitting in the truck, with or without legs crossed, or stepping out of the truck. The hearing officer's decision that the claimant sustained a compensable injury on _____, and that the compensable injury includes left foot drop, peroneal nerve dysfunction across the left knee, lumbar strain and lumbar radiculopathy 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 decision that the claimant sustained a compensable injury on _____, and that the compensable injury includes left foot drop, peroneal nerve dysfunction across the left knee, lumbar strain, and lumbar radiculopathy and we render a new decision that the claimant did not sustain a compensable injury on _____, that the injury does not include left foot drop, peroneal nerve dysfunction across the left knee, lumbar strain and lumbar radiculopathy.

DISABILITY

Because we have reversed the hearing officer's determination that the claimant sustained a compensable injury on _____, and rendered a new decision that the claimant did not sustain a compensable injury on _____, the claimant cannot by definition in Section 401.011(16) have disability. Accordingly, we reverse the hearing officer's determination that the claimant sustained disability from August 15, 2009, through the date of the CCH and render a new decision that the claimant did not have disability from August 15, 2009, through the date of the CCH.

SUMMARY

We reverse the hearing officer's determinations that the claimant sustained a compensable injury on _____; the compensable injury includes left foot drop, peroneal nerve dysfunction across the left knee, lumbar strain and lumbar radiculopathy; and the claimant sustained disability from August 15, 2009, continuing through the date of the CCH. We render a new decision that the claimant did not sustain a compensable injury on _____; the compensable injury does not include left foot drop, peroneal nerve dysfunction across the left knee, lumbar strain and lumbar radiculopathy; and the claimant did not sustain disability from August 15, 2009, continuing through the date of the CCH.

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

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge