

APPEAL NO. 100818  
FILED AUGUST 27, 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 was held on May 19, 2010. With regard to the sole issue before her, the hearing officer determined that the compensable injury of \_\_\_\_\_, includes a cervical disc herniation at C5-6 with radiculopathy.

The appellant (carrier) appealed the hearing officer's extent-of-injury determination. Respondent 1 (claimant) responded, urging affirmance. The appeal file does not contain a response from respondent 2 (subclaimant).

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. The claimant testified that she held a ladder for a 300-pound co-worker to ascend and the co-worker fell onto the claimant from above. It is undisputed that the claimant sought medical attention that same day and was treated for the primary diagnosis of contusion of the left wrist with a secondary diagnosis of "struck by falling object." The claimant's initial treating doctors were at (Clinic C). It is undisputed that she was assessed and treated for left shoulder/arm, wrist, hand, knee, and elbow injuries. None of the medical records in evidence from Clinic C contain any complaints or diagnoses pertaining to headaches or to the neck. The parties further stipulated that the carrier has accepted liability for an injury to the left shoulder, left wrist, and left knee contusion and has disputed any other diagnosis.

In evidence is an EMG/Nerve Conduction Study Report of the left upper extremity (UE) dated May 22, 2009, which showed no evidence of radiculopathy. The first medical record in evidence referencing headaches is from (Dr. N), who became her treating doctor after Clinic C. In an office visit report dated July 7, 2009, Dr. N states that the claimant is complaining of headaches with dizziness and that an EMG showed cervical nerve irritation. The only EMG in evidence showing cervical nerve irritation at C5, C6 is dated (date), which is four days prior to the date of injury, and was performed by Dr. N. The claimant testified that she did not begin treating with Dr. N until June of 2009. The first medical provider who documented neck pain is (Dr. H) in his initial evaluation dated July 20, 2009. It is undisputed that on July 27, 2009, the claimant underwent a cervical spine MRI, which stated "[n]oted is spondylosis and degenerative disc disease at C5-6 with marginal osteophyte formation, dehydration and moderate compromise of the disc space height." The impression is cervical spondylosis with right foraminal stenosis at C5-6 and bulging disc with 3 mm broad based central disc herniation at C5-6.

The claimant was referred to (Dr. P), who performed a C5-6 anterior cervical decompression and fusion on August 27, 2009. The claimant testified that Dr. P and Dr. H told her that “from the force of [the co-worker] and the ladder twisting my body, it could have -- would have caused the herniation because I’d never had an injury to my neck. I’d never had headaches before, and all of a sudden I have headaches. Since the surgery, I don’t have a headache.” There is no causation letter from a medical provider in evidence linking the mechanism of injury on \_\_\_\_\_, to the claimed extent-of-injury diagnosis.

### **EXTENT OF INJURY**

The hearing officer found that the compensable injury of \_\_\_\_\_, included a cervical disc herniation at C5-6 with radiculopathy. In the Discussion portion of her decision and order, the hearing officer stated that:

To meet her burden of proof, [c]laimant presents her testimony and the medical records from her providers. Claimant testified that she was having pain all over her body immediately after the injury and that her doctors’ initial concerns were her left arm and wrist. Claimant testified that she was having headaches and neck pain radiating into her left arm that was diagnosed as a C5-6 disc herniation with radiculopathy by [Dr. H] and [Dr. P]. Claimant’s diagnosis was based on physical examination, an MRI, and an EMG.

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Carrier argues that expert evidence is needed to establish causation in this case. However, the condition claimed and the timeline of events are not beyond common knowledge. The claimant’s credible testimony and the medical records in evidence establish that her compensable injury extends to include cervical disc herniation at C5-6 with radiculopathy.

We disagree. We note that there is an attenuation factor in this case. Unlike other cases finding lay testimony sufficient evidence of causation, there are no documented neck or headache complaints immediately after the work accident of \_\_\_\_\_. See *generally City of Laredo v. Garza*, 293 S.W.3d 625 (Tex. App.-San Antonio 2009). In evidence is an EMG of the left UE performed May 22, 2009, showing no radiculopathy. There are no medical records in evidence of neck and headache complaints until July of 2009. Therefore, the conclusion that the co-worker’s fall onto the claimant’s left UE and knee would cause a cervical disc herniation at C5-6 with radiculopathy is a matter beyond common knowledge or experience and would require expert medical evidence. See *generally, Guevara v. Ferrer*, 247 S.W.3d 662 (Tex. 2007).

In reviewing a “great weight” challenge, we must examine the entire record to determine if: (1) there is only “slight” evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). In applying this standard to the facts of this case, the hearing officer’s determination that the compensable injury of \_\_\_\_\_, includes a cervical disc herniation at C5-6 with radiculopathy is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Accordingly, we reverse the hearing officer’s determination that the compensable injury of \_\_\_\_\_, included a cervical disc herniation at C5-6 with radiculopathy and we render a new decision that the compensable injury of \_\_\_\_\_, does not include a cervical disc herniation at C5-6 with radiculopathy.

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

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Cynthia A. Brown  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Thomas A. Knapp  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge