

APPEAL NO. 100934  
FAXED SEPTEMBER 13, 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 June 16, 2010. The hearing officer determined that: (1) the respondent/cross-appellant (claimant) sustained a compensable injury on \_\_\_\_\_; (2) the claimant had disability resulting from the compensable injury from May 9 through August 2, 2009; and (3) the appellant/cross-respondent (carrier) did not waive the right to contest compensability of the claimed injury in accordance with Section 409.021.<sup>1</sup> The carrier appeals the determinations adverse to the carrier, and argues that the claimant's lung conditions were not shown to be work-related by the expert medical evidence. The claimant responds, urging affirmance; however, the claimant also filed a cross-appeal, contending that the hearing officer's decision and order concerning the compensable injury be reformed to reflect that the claimant sustained an injury to his right side, right chest wall and right lung resulting in pneumonia and infection of the underlying lung (pleural effusion) in the course and scope of his employment on \_\_\_\_\_. The carrier filed a response to the claimant's cross-appeal, contending that the extent of injury was not an issue at the CCH. The hearing officer's determination that the carrier did not waive the right to contest compensability of the claimed injury in accordance with Section 409.021 has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

**BACKGROUND INFORMATION**

The claimant, an internet manager for the employer, a car dealership, was showing a RAM 1500 truck to a couple on \_\_\_\_\_. The claimant testified that when one of the couple's children opened the door on the vehicle, a gust of wind caught the door and caused it to strike the claimant on his right side. The claimant testified the strike was significant enough that he fell back a couple of steps, and caused immediate pain in his right side that subsequently somewhat subsided.

The claimant, believing he had cracked a rib, went to his physician, (Dr. J) on April 30, 2009, for treatment. The claimant testified that Dr. J agreed he may have a contusion or injured rib, and gave him patches, pain killers, and relaxers.

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<sup>1</sup> We note the parties' stipulation that (Dr. I) was appointed as the designated doctor by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine ability to return to work, if disability was a result of the claimed injury, and if the injury resulted from the claimed incident was not reflected in the hearing officer's decision and order.

The claimant testified that he returned to work. While at work on May 5, 2009, the claimant felt severe pain in his right side. The claimant went to the emergency room (ER) that evening due to the pain. The evidence reflects that the ER doctor ordered CT chest x-rays, which revealed hypoinflation with a moderate right pleural effusion and adjacent opacity likely representing compression atelectasis; mild cardiomegaly; perihepatic ascites with an indeterminate low attenuation hepatic lesion; and status post cholecystectomy.

The claimant testified that (Dr. P), a lung specialist at the ER, told him that he had trauma induced pleural effusion. Medical records indicate that physicians initially attempted to drain fluid from the claimant's lung, but determined that the claimant's lung contained an infection and were unsuccessful. Antibiotics were prescribed to treat the infection but were unsuccessful. The claimant then underwent a surgical procedure to remove the infection. He remained in the intensive care unit for 8 days, and stayed in the hospital for a total of 15 days as a result of the lung condition.

### **DISABILITY**

The hearing officer's determination that the claimant had disability resulting from the compensable injury from May 9 through August 2, 2009, is supported by sufficient evidence and is affirmed.

### **COMPENSABLE INJURY**

As previously mentioned, the hearing officer determined that the claimant sustained a compensable injury on \_\_\_\_\_. In Finding of Fact No. 3, the hearing officer stated: "[the] [c]laimant sustained an injury to his right side, right chest wall and right lung resulting in pneumonia in the course and scope of his employment on \_\_\_\_\_." The carrier contends that the claimant's lung conditions require expert medical evidence to establish causation between the injury and the claimant's work.

We have previously held that proof of causation must be established to a reasonable medical probability by expert evidence where the subject is so complex that a fact finder lacks the ability from common knowledge to find a causal connection. Appeals Panel Decision 022301, decided October 23, 2002. See *also* Guevara v. Ferrer, 247 S.W.3d 662 (Tex. 2007). See *also* City of Laredo v. Garza, 293 S.W.3d 625 (Tex. App.-San Antonio 2009, no pet.). 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).

The hearing officer's determination that the claimant sustained a compensable injury on \_\_\_\_\_, is supported by sufficient evidence and is affirmed. However, we hold the determination that the claimant sustained an injury to the right lung resulting

in pneumonia is so complex that a fact finder lacks the ability from common knowledge to find a causal connection, and as such requires expert medical evidence to establish causation. See Ferrer and Garza, *supra*.

The claimant relied upon the designated doctor to establish the necessary causation. Dr. I was appointed by the Division as the designated doctor to determine: (1) if the injury resulted from the \_\_\_\_\_, incident; (2) ability to return to work; (3) disability; (4) maximum medical improvement; and (5) impairment rating. Based on an examination occurring on December 1, 2009, Dr. I stated “[i]t is difficult to determine if the lung infection that required surgery was due to: a) pneumonia [or] b) trauma causing hematoma of lung [sic] that got infected later on.”

A letter of clarification was sent to Dr. I requesting he specifically address whether or not the claimant sustained an injury from the claimed incident, and what, if any, was the injury. Dr. I responded stating:

It is more likely than not, i.e. there is an injury resulting from the claimed incident. Contusion of the chest wall, possibly also contusion of the lung underneath.

If there was contusion of the underlying lung caused by the injury than [sic] it could lead to infection of the underlying lung, leading to the complication requiring surgery to correct it.

We hold that Dr. I's opinion does not constitute expert medical evidence within reasonable medical probability sufficient to establish that the \_\_\_\_\_, injury caused an injury to the right lung resulting in pneumonia. Therefore, we reverse that portion of the hearing officer's Finding of Fact No. 3 that the claimant sustained an injury to the right lung resulting in pneumonia in the course and scope of employment on \_\_\_\_\_.

The claimant contended in his cross-appeal that the hearing officer's decision and order be reformed to reflect an additional condition of infection of the underlying lung, pleural effusion, in the course and scope of his employment on \_\_\_\_\_. However, there was no expert medical evidence presented to establish the necessary causation of the infection of the underlying lung, pleural effusion. Additionally, we note that extent of injury was not an issue at the CCH.

We therefore affirm that portion of the hearing officer's Finding of Fact No. 3 that the claimant sustained an injury to his right side and right chest wall in the course and scope of his employment on \_\_\_\_\_, and we reverse that portion of Finding of Fact No. 3 that the claimant sustained an injury to his right lung resulting in pneumonia in the course and scope of his employment on \_\_\_\_\_, and we render a new decision by striking that portion of Finding of Fact No. 3 that the claimant sustained an injury to his right lung resulting in pneumonia in the course and scope of his employment on \_\_\_\_\_.

## SUMMARY

We affirm the hearing officer's determination that the claimant sustained a compensable injury on \_\_\_\_\_.

We affirm the hearing officer's determination that the claimant had disability resulting from the compensable injury from May 9 through August 2, 2009.

We reverse that portion of the hearing officer's Finding of Fact No. 3 that the claimant sustained an injury to his right lung resulting in pneumonia in the course and scope of his employment on \_\_\_\_\_.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE 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 78701-3232.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cynthia A. Brown  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge