

APPEAL NO. 111262
FILED OCTOBER 18, 2011

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 July 20, 2011. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to the T11-12 disc bulge, aggravation to spondylolisthesis, thoracic segmental disc dysfunction, lumbar intervertebral disc disorder with myelopathy, myofascitis, L5-S1 disc protrusion and annular fissure, disc bulge at L3-4 and L4-5 disc bulge with annular fissures; (2) the respondent (claimant) has disability resulting from an injury sustained on (date of injury), from March 6, 2011, through the date of the CCH; (3) the claimant has not reached maximum medical improvement (MMI); and (4) since the claimant has not reached MMI, his compensable injury cannot be certified with an impairment rating (IR). The appellant (carrier) appeals the hearing officer's determinations of disability, MMI, IR, and the extent of the claimant's injury. The claimant responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that on (date of injury), the claimant sustained a compensable injury and that (Dr. L) was appointed by the Texas Department of Insurance, Division of Workers' Compensation to address the date of MMI and the IR.

The hearing officer's determination that the compensable injury extends to the T11-12 disc bulge, L5-S1 disc protrusion and annular fissure, and disc bulge at L3-4 and L4-5 disc bulge with annular fissures is supported by sufficient evidence and is affirmed.

The hearing officer's determination that the claimant has disability resulting from an injury sustained on (date of injury), from March 6, 2011, through the date of the CCH is supported by sufficient evidence and is affirmed.

The hearing officer's determinations that the claimant has not reached MMI and that since the claimant has not reached MMI, his compensable injury cannot be certified with an IR are supported by sufficient evidence and are affirmed.

SPONDYLOLISTHESIS

In Guevara v. Ferrer, 247 S.W.3d 662, 665 (Tex. 2007), the Texas Supreme Court reiterated the longstanding general rule that “expert testimony is necessary to establish causation as to medical conditions outside the common knowledge and experience of jurors.” The hearing officer stated in the Background Information portion of his decision that the cause and existence of the specific spinal column pathologies are matters beyond common experience and medical evidence needs to be submitted which establishes a causal connection as a matter of reasonable medical probability.

The hearing officer further stated that the claimant’s doctor addressed the diagnoses in the questions he was posed by the claimant’s attorney, citing to the specific exhibit in evidence he relied on to make his determination. The exhibit referenced by the hearing officer asks specifically about the claimant’s lumbar MRI of July 30, 2010. The claimant’s treating doctor states that the MRI revealed the claimant had posterior spondylosis and further opined that although the spondylosis was degenerative it “more than likely [was] aggravated [at] the time of injury.” The doctor agrees that the answers he provides are based on a reasonable degree of medical probability. The MRI referenced by the claimant’s treating doctor is also in evidence and reflects that the findings include posterior spondylosis. However, the MRI does not include a finding of spondylolisthesis which is the condition at issue in the CCH, nor does any medical record in evidence reflect that the claimant was ever diagnosed with spondylolisthesis.

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).

That portion of hearing officer’s determination that the compensable injury of (date of injury), extends to aggravation of spondylolisthesis is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Accordingly, we reverse that portion of the hearing officer’s determination that the compensable injury of (date of injury), extends to aggravation of spondylolisthesis and render a new decision that the compensable injury of (date of injury), does not extend to aggravation of spondylolisthesis.

THORACIC SEGMENTAL DISC DYSFUNCTION, LUMBAR INTERVERTEBRAL DISC DISORDER WITH MYELOPATHY AND MYOFASCITIS

The Appeals Panel has 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 (APD) 022301, decided October 23, 2002. See also Guevara, *supra*. To be probative, expert testimony must be based on reasonable medical probability. City of Laredo v. Garza, 293 S.W.3d 625 (Tex. App.—San Antonio 2009, no pet.) citing Insurance Company of North America v. Meyers, 411 S.W.2d 710, 713 (Tex. 1966).

In evidence is a medical report from the claimant's treating doctor that answers questions posed to him by the claimant's attorney. Three of the questions in varying forms specifically ask the doctor whether or not specific findings of the MRI were in the doctor's opinion based on a reasonable degree of medical probability caused or aggravated by the compensable injury. The final question simply asks the treating doctor to list his diagnoses. So, the treating doctor simply lists without further explanation the following: intervertebral disc disorder with myelopathy of the lumbar region, thoracic segmental dysfunction, myofascitis, and cervical segmental dysfunction (a condition which is not currently at issue). There are other medical records in evidence that diagnose the claimant with some of these same conditions. However, no doctor opines that the compensable injury caused or aggravated these conditions.

Under the facts of this case, the diagnoses of intervertebral disc disorder with myelopathy of the lumbar region, thoracic segmental dysfunction, myofascitis without attendant explanation how these conditions may be related to the compensable injury does not establish the conditions are related to the compensable injury within a reasonable degree of medical probability. See State Office of Risk Mgmt. v. Adkins, 2011 Tex. App. LEXIS 6187 (Tex. App. Dallas Aug. 9, 2011), Transcontinental Insurance Company v. Crump, (Tex. 2010), and APD 101323-s, decided November 8, 2010. Accordingly, we reverse that portion of the hearing officer's decision that the compensable injury of (date of injury), extends to thoracic segmental disc dysfunction, lumbar intervertebral disc disorder with myelopathy, and myofascitis. We render a new decision that the compensable injury of (date of injury), does not extend to thoracic segmental disc dysfunction, lumbar intervertebral disc disorder with myelopathy, and myofascitis.

SUMMARY

We affirm that portion of the hearing officer's determination that the compensable injury extends to the T11-12 disc bulge, L5-S1 disc protrusion and annular fissure, and disc bulge at L3-4 and L4-5 disc bulge with annular fissures.

We affirm the hearing officer's determination that the claimant has disability resulting from an injury sustained on (date of injury), from March 6, 2011, through the date of the CCH.

We affirm the hearing officer's determinations that the claimant has not reached MMI and that since the claimant has not reached MMI, his compensable injury cannot be certified with an IR.

We reverse that portion of the hearing officer's determination that the compensable injury of (date of injury), extends to aggravation of spondylolisthesis and render a new decision that the compensable injury of (date of injury), does not extend to aggravation of spondylolisthesis.

We reverse that portion of the hearing officer's decision that the compensable injury of (date of injury), extends to thoracic segmental disc dysfunction, lumbar intervertebral disc disorder with myelopathy, and myofascitis. We render a new decision that the compensable injury of (date of injury), does not extend to thoracic segmental disc dysfunction, lumbar intervertebral disc disorder with myelopathy, and myofascitis.

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

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

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas L. Knapp
Appeals Judge