APPEAL NO. 120352
FILED APRIL 27, 2012

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 January 26, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that: (1) the compensable injury of [date of injury], did not extend to left knee acute chondromalacia of the patella; (2) the appellant (claimant) reached maximum medical improvement (MMI) on March 28, 2011; and (3) the claimant's impairment rating (IR) is 1%. The claimant appealed the hearing officer's determinations on extent of injury, MMI, and IR. The respondent (self-insured) responded, urging affirmance.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on [date of injury]; and that [Dr. D] was appointed as the designated doctor by the Texas Department of Insurance, Division of Workers' Compensation (Division) to address MMI, IR, and extent of injury. The claimant, a police officer, testified that during the pursuit of suspects, he injured his left knee when he jumped from a standing position atop a 6 to 8 foot high fence to the cement sidewalk. He testified he felt immediate pain and his left knee swelled to the size of a grapefruit. The evidence reflects that the self-insured has accepted a left knee sprain/strain and left knee medial meniscus tear. The evidence further reflects that the claimant has been diagnosed with partial tear of medial meniscus, posterior horn and anterior horn and acute traumatic left knee patellar chondromalacia of the patella. The claimant underwent arthroscopy of the left knee with partial medial meniscectomy and chondroplasty of patella performed by [Dr. DK] on November 5, 2010.

EXTENT OF INJURY

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 v. Ferrer, 247 S.W.3d 662 (Tex. 2007). 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 analyzing the applicable law and facts of the case, the hearing officer stated in his Background Information section of his decision:

Dr. [DK] omits the term "acute chondromalacia" in his causation letter. He does not rule out how other factors, such as [c]laimant's athletic activities, are not a cause of the contended injury, as required in [Transcon. Ins. Co. v. Crump, 330 S.W.3d 211 (Tex. 2010)]. Claimant has failed to provide this specific, required opinion. It is clear what the surgical report says and what Dr. [DK] found during the operation.

We note that in Dr. DK's causation letter dated November 28, 2011, Dr. DK incorporates into his letter his original consultation notes dated June 24, 2010, as well as his operative report dated November 5, 2010, when giving his medical opinion. The November 5, 2010, operative report specifically states that the claimant is diagnosed with acute traumatic left knee patellar chondromalacia. Under the description of procedure section of that report, Dr. DK stated:

> However, on the patella, the patient had a non-degenerative lesion present. He had what appeared to be a traumatic injury to his patella. The cartilage demonstrated gross injury with fissure formation and instability from the subchondral bone. This was definitely not a typical degenerative appearance and was most consistent with a traumatic origin. There was extensive damage to the hyaline cartilage of the patella. . . . Again, the appearance of the cartilage was not consistent with the degenerative process but was consistent with a traumatic injury as reported by the patient.
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> The original MRI done shortly after the injury did not reflect the findings seen at the time of the operation. I suspect that the original injury damaged the cartilage which has gone on to develop these fissures as a direct result of the injury.

The Supreme Court in its Crump decision considered in part the issue of whether expert medical causation testimony from a treating physician relying on a differential diagnosis is reliable and therefore legally sufficient evidence to support the jury's verdict. The Supreme Court held that "the treating physician's opinion was based on a reliable foundation and, therefore, legally sufficient evidence supports the jury's verdict." The Supreme Court recognized that differential diagnosis is "a clinical process whereby a doctor determines which of several potential diseases or injuries is causing the patient's symptoms by ruling out possible causes—by comparing the patient's

symptoms to symptoms associated with known diseases, conducting physical examinations, collecting data on the patient's history and illness, and analyzing that data—until a final diagnosis for proper treatment is reached."

We note that an analysis of other possible causes of an injury or illness is a factor to consider when determining causation. *See* Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786 (1993) and E. I. du Pont de Nemours & Co., Inc. v. Robinson, 923 S.W.2d 549 (Tex. 1995). However, the Supreme Court in Crump noted that "a medical causation expert need not 'disprov[e] or discredit[] every possible cause other than the one espoused by him.'" The Supreme Court does not hold that the only method to establish expert medical causation evidence is by differential diagnosis.

In this case, the hearing officer misinterpreted and misapplied the law under the Crump decision because he has interpreted that case as requiring a differential diagnosis from a doctor to establish causation and this requires a remand.

Accordingly, we reverse the hearing officer's determination that the compensable injury of [date of injury], did not extend to left knee acute chondromalacia of the patella and remand the extent-of-injury issue to the hearing officer for further action consistent with this decision.

The hearing officer must utilize the proper legal standard in analyzing and weighing the evidence in this case.

The hearing officer is to determine the extent-of-injury issue based on the evidence already admitted at the CCH.

MMI AND IR

There are multiple certifications of MMI and IR in evidence. There are three certifications of MMI/IR from Dr. D, the designated doctor appointed for extent of injury, MMI, and IR and one certification from [Dr. DS], a referral doctor selected by the treating doctor to act in place of the treating doctor.

Dr. D examined the claimant on May 6, 2011. There are three Reports of Medical Evaluation (DWC-69) for the certifying exam. One certification of MMI/IR considered only a left knee medial collateral ligament sprain, placing the claimant at MMI on July 12, 2010, with 0% IR. An alternative certification of MMI/IR considered a left knee medial collateral ligament sprain and a left knee medial meniscus tear, placing the claimant at MMI on December 17, 2010, with 1% IR per Table 64.

The third DWC-69 is the only alternative certification of MMI/IR by Dr. D certifying that the claimant reached MMI on March 28, 2011, with 1% IR. In his narrative attached to that DWC-69, Dr. D stated:

> For the claimant/provider injuries [which includes the left knee acute chondromalacia of the patella], the [claimant] reached MMI March 28, 2011. At that time he was noted to have full range of motion, a home exercise program was instituted, and he was returned to work regular duty. No further care was planned or rendered. Therefore, MMI is [March 28, 2011].

According to the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000), Dr. D assigned the claimant 1% IR, using Table 64, page 3/85, for a partial medial meniscectomy.

We note that Dr. DS, the referral doctor, examined the claimant on November 23, 2011, and certified that the claimant reached MMI on that date with 8% IR. The hearing officer commented in the Background Information section of his decision that Dr. DS's certification of MMI/IR was not sufficient because he failed to explain his IR with the appropriate tables, figures and worksheets.

The extent-of-injury issue regarding the left knee acute chondromalacia of the patella has not been resolved and has been remanded. Therefore, the hearing officer erred in adopting the MMI date of March 28, 2011, as certified by Dr. D. That certification considered the compensable injury to include the disputed acute left knee chondromalacia of the patella. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on March 28, 2011, with 1% IR and remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

The hearing officer is to determine the issues of MMI and IR based on the evidence already admitted at the CCH.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **[SELF-INSURED]** and the name and address of its registered agent for service of process is

[SF, CITY ATTORNEY]
[ADDRESS]
[CITY], TEXAS [ZIP CODE].

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge