

APPEAL NO. 121465
FILED OCTOBER 8, 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 was held on June 26, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the compensable injury of [date of injury], extends to aggravation of the C3-4, C5-6, and C6-7 degenerative disc disease, cervical facet syndrome, tinnitus, post-concussive syndrome, and post-concussive migraine headaches. The appellant (carrier) appeals the hearing officer's extent-of-injury determination. The appeal file does not contain a response from the (respondent) claimant.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], in the form of a cervical sprain/strain and a superficial head injury and that the claimant has been diagnosed with the medical conditions at issue before this hearing. The claimant testified that he was injured while driving a forklift for the employer. He testified that the back wheel of the forklift he was driving hit a pile of grass causing him to be thrown from the seat and strike his head on the top of the forklift and against a cross-beam in the forklift. The claimant was then thrown back into his seat as the forklift came down. The claimant's treating doctor, [Dr. G] in a letter dated April 30, 2012, explains how the mechanism of injury experienced by the claimant caused an aggravation of degenerative disc disease in the cervical spine levels in dispute as well as cervical facet syndrome. That portion of the hearing officer's decision that the compensable injury of [date of injury], extends to aggravation of the C3-4, C5-6, and C6-7 degenerative disc disease, and cervical facet syndrome is supported by sufficient evidence and is affirmed.

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 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).

The claimant initially sought medical treatment three days after the incident. On December 5, 2010, the claimant went to the emergency room. The claimant was discharged after x-rays were reviewed and was given a soft neck collar and told to follow-up with his primary care physician.

The parties stipulated that [Dr. S] was appointed to determine maximum medical improvement, impairment rating, and return to work. Dr. S examined the claimant on March 11, 2011, and in connection with the claimant's head condition stated that there is no objective evidence of anatomic or physiologic deficit attributable to the injury of [date of injury].

In evidence is a peer review report dated March 23, 2012, from [Dr. St] in which he notes that there was no documentation of any confusion, disorientation, anterograde or retrograde amnesia. Dr. St concludes that there was no documentation of any medical evidence that would lead a "reasonable physician" to diagnose a cerebral concussion.

In evidence is a narrative report dated May 9, 2012, from [Dr. J], which noted that he evaluated the claimant on January 5, 2012. Although Dr. J noted that this evaluation was approximately one month after the date of the injury, it was actually over a year from the date of the compensable injury of [date of injury]. Dr. J stated that the claimant was evaluated for headaches and tinnitus. Dr. J concluded that since the diagnoses of tinnitus and post-concussive migraine headaches became apparent right after his work-related accident, "this is felt to be the cause, as trauma could cause these diagnoses." Dr. J acknowledged that there is no testing available to objectively correlate his symptoms with the timing of his injury. That trauma could cause these diagnoses states no more than a possibility and is not enough to establish a causal connection.

That portion of the hearing officer's determination that the compensable injury of [date of injury], extends to tinnitus, post-concussive syndrome and post-concussive migraine headaches, 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 tinnitus, post-concussive syndrome, and post-concussive migraine headaches and render a new decision that the compensable injury of [date of injury], does not extend to tinnitus, post-concussive syndrome, and post-concussive migraine headaches.

SUMMARY

We affirm that portion of the hearing officer's decision that the compensable injury of [date of injury], extends to aggravation of the C3-4, C5-6, and C6-7 degenerative disc disease, and cervical facet syndrome.

We reverse that portion of the hearing officer's determination that the compensable injury of [date of injury], extends to tinnitus, post-concussive syndrome, and post-concussive migraine headaches and render a new decision that the compensable injury of [date of injury], does not extend to tinnitus, post-concussive syndrome, and post-concussive migraine headaches.

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

**JOSEPH KELLY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge