

APPEAL NO.121559
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 CCH was held on July 6, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the sole issue before her, the hearing officer determined that the compensable injury of [date of injury], extends to a diagnosed cervical disc herniation at C4-5, a cervical disc herniation at C5-6 with bilateral foraminal stenosis, cervical IVD, cervical radiculopathy, stenosis centrally and in foramina at L3-4 and L4-5, a lumbar disc herniation with annular tear at L4-5, lumbar IVD, lumbar radiculopathy, thoracic IVD at T11-L2¹ and at T12-L1, gastroenteritis, anxiety and depression.

The appellant (carrier) appealed, contending that the hearing officer's decision was not supported by expert medical evidence and that the evidence does not establish causation of the claimed conditions to the compensable injury. The claimant responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

It is undisputed that the claimant was a maintenance man at an apartment complex and that on [date of injury], he suffered multiple injuries when he fell down a flight of stairs while carrying some equipment. The carrier has accepted a cervical strain and lumbar sprain/strain only.

COMPENSABLE CONDITIONS

The hearing officer's determination that the claimant's compensable injury of [date of injury], extends to a diagnosed cervical disc herniation at C4-5, a cervical disc herniation at C5-6 with bilateral foraminal stenosis, cervical radiculopathy, stenosis centrally and in foramina at L3-4 and L4-5, a lumbar disc herniation with annular tear at L4-5, and lumbar radiculopathy, is supported by sufficient evidence and is affirmed.

OTHER CLAIMED CONDITIONS

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

¹ The hearing officer's decision and order and a medical report refer to T11-L2 but probably means T11-12.

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 claimed conditions under the facts of this case require expert evidence of a causal connection within a reasonable medical probability.

The hearing officer, in the Background Information portion of her decision, commented:

The more persuasive evidence comes from [the] [c]laimant's treating doctor, [Dr. O], who states that the compensable injury does extend to include the above noted diagnoses. [Dr. O] provided a narrative with great detail as to how the [c]laimant's fall caused or aggravated the claimed conditions.

Dr. O, in a "To Whom It May Concern" letter dated March 21, 2012, stated that the claimant is in his care for an on-the-job injury and included anxiety and gastroenteritis in the claimant's treating diagnoses. Dr. O stated his intention to continue a prescription of Pepcid for the prevention and treatment of gastroenteritis. Under a subheading of "Medical Necessity" Dr. O wrote that the claimant suffers from the diagnoses of anxiety and gastroenteritis and that "[p]atients suffering from shock, sepsis, massive burns, trauma, or head injury can develop acute erosive gastric mucosal changes or frank ulceration with bleeding" and that treatment with Pepcid "yields satisfactory results." Dr. O included some handwritten progress notes indicating that the claimant has anxiety and gastroenteritis secondary to medication. Dr. O does not relate how the compensable fall down some stairs would cause, or aggravate, the anxiety and/or gastroenteritis or a causal connection between those conditions and the compensable injury within a reasonable medical probability. There is insufficient expert medical evidence that the claimed conditions of anxiety and gastroenteritis are causally related to the compensable injury.

Also in evidence is a letter report dated April 5, 2012, in which Dr. O states that the letter "is meant to address the extent-of-injury issue pending in [the claimant's] above referenced workers' compensation claim." That report also stated that Dr. O was incorporating his previous medical records into his report for purposes of his analysis. Dr. O stated:

The mechanism of injury in [the claimant's] [date of injury], accident was a trip and fall down some stairs while working, striking multiple areas of his body on the staircase: including his cervical and lumbar spine areas. It is

my professional opinion that in all reasonable medical probability [the claimant] sustained the following diagnoses and injuries as a direct result of the accident, and/or suffered an aggravation of pre-existing conditions as a direct result of the [[date of injury]], accident.

Included in Dr. O's diagnoses were "[l]umbar IVD," "[c]ervical IVD," "T11-L2: IVD," "T12-L1: IVD," "[a]nxiety and depression" and "[g]astroenteritis." Other than stating that the claimant tripped and fell "striking multiple areas of his body on the staircase: including his cervical and lumbar spine areas" there was no other expert medical evidence of causation given for the claimed conditions. Neither Dr. O, nor any other doctor in this case, defined what is meant by lumbar, cervical, and thoracic "IVD" nor do they relate those conditions to the [date of injury], compensable injury based on a reasonable medical probability. Dr. O merely recited that the claimant fell down some stairs striking multiple areas of his body including the cervical and lumbar spine areas. Dr. O does not define an IVD nor relate how it was caused or aggravated by the fall. We have previously addressed the lack of expert medical evidence which is required for the conditions of anxiety and gastroenteritis. Dr. O mentions depression as a diagnosis in some of his office notes but does not address the causation within a reasonable medical probability. There is insufficient expert medical evidence in Dr. O's reports to establish a causal connection between the cited conditions and the compensable injury within a reasonable medical probability.

The parties stipulated that [Dr. B] was appointed as the designated doctor to determine maximum medical improvement, impairment rating, and extent of injury. In a report dated February 6, 2012, regarding the extent-of-injury issue, Dr. B wrote:

The examinee is status post fall with subsequent cervical and lumbar radiculopathy. During the injury he sustained a cervical strain and lumbar strain with aggravation of his degenerative disc disease of the cervical and lumbar regions.

Dr. B does not mention a thoracic injury or IVDs, gastroenteritis, anxiety or depression. Dr. B's report does not provide expert medical evidence of causation of those conditions to reasonable degree of medical probability.

There is insufficient expert medical evidence to establish a causal connection between the cervical IVD, lumbar IVD, thoracic IVD at T11-12, and at T12-L1, gastroenteritis, anxiety and depression to the compensable injury within a reasonable medical probability. Accordingly, we reverse so much of the hearing officer's extent-of-injury determination that the compensable injury of [date of injury], includes cervical IVD, lumbar IVD, thoracic IVD at T11-12 and at T12-L1, gastroenteritis, anxiety and depression. We render a new decision that the compensable injury of [date of injury],

does not include cervical IVD, lumbar IVD, thoracic IVD at T11-12 and at T12-L1, gastroenteritis, anxiety and depression.

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

**MR. RON O. WRIGHT, PRESIDENT
6210 HIGHWAY 290 EAST
AUSTIN, TEXAS 78723.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge