

APPEAL NO. 121826
FILED NOVEMBER 6, 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 August 15, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [date of injury], extends to the diagnosed L4-5 disc extrusion/fragment; (2) the compensable injury of [date of injury], does not extend to the diagnosed lumbar degenerative disc disease and T12-L1 disc bulge; (3) the respondent (claimant) reached maximum medical improvement (MMI) on January 13, 2010; (4) the claimant's impairment rating (IR) is five percent; and (5) the first certification of MMI and assigned IR from [Dr. B] did become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12). The appellant (carrier) appeals the hearing officer's extent-of-injury determination adverse to the carrier, contending that there was insufficient expert evidence linking the diagnosed L4-5 disc extrusion/fragment to the compensable injury. The claimant responded, urging affirmance of the disputed extent-of-injury determination adverse to the carrier.

The hearing officer's determination that the compensable injury of [date of injury], does not extend to the diagnosed lumbar degenerative disc disease and T12-L1 disc bulge was not appealed and has become final pursuant to Section 410.169.

The hearing officer's determination that the claimant reached MMI on January 13, 2010, with five percent IR was not appealed and has become final pursuant to Section 410.169.

The hearing officer's determination that the first certification of MMI and assigned IR from Dr. B did become final under Section 408.123 and Rule 130.12 was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], in the form of a lumbar sprain/strain and L5-S1 disc herniation. The claimant testified that she was lifting a 30-35 pound pan of potato salad when she injured her low back while working as a cook at a prison.

The evidence reflects that the claimant underwent a lumbar MRI on February 12, 2009, and that report stated that at L4-5 there is "moderate disc bulging." There is no impression of L4-5 disc extrusion/fragment. The evidence reflects that the claimant

underwent a left L5-S1 foraminotomy, discectomy and laminectomy performed by [Dr. BC] on May 26, 2009. The surgical pathology report states “[v]ertebral disc fragments, labeled L5-S1: [d]egenerative changes, slight; no inflammation or granulation tissue seen.”

The claimant testified that after her 2009 surgery, she began to have right low back pain radiating to her right lower extremity. The claimant was referred to a pain management doctor, [Dr. S]. In a report dated January 28, 2010, Dr. S stated that:

First [February 2009] MRI films reviewed, has also disc protrusion at L4-5 not mentioned. I suspect that part of nucleus material [from] L5-S1 went to [right] neuroforamina. Also possibility of L4-5 causing current symptoms. I obtained new MRI [dated October 6, 2009]. New MRI reviewed and is post-surgery. Shows L4-5 disc extrusion with L5-S1 neural foramina stenosis.

In evidence is a third MRI which the claimant underwent on November 14, 2011. Its impressions include a large right paracentral focal disc extrusion demonstrated at L4-5 with caudal extension of the extruded disc fragment “which extends approximately 6 meters into the spinal canal with posterior displacement of the right L5 nerve root and with inferior extension of the extruded disc fragment of approximately 1 cm.”

There is a record dated January 26, 2012, in which Dr. BC stated:

After [a] review of imaging I find evidence of a disc fragment at the right side at the levels of L4-5. After [surgery] [the claimant] began with symptomatology at the right leg without cease. I believe this injury is related to the original injury for which she received workman’s compensation. Having opened the annulus and removing the foraminal disc on one side, the other side can become weaker and more prone for herniation. [The claimant] has positive straight leg raise and a decrease in sensation at the medial aspect of the tibial region upon dorsiflexion. We will submit this note for approval of a laminectomy and discectomy at L4-5.

The record reflects that the claimant underwent a second surgery, L4-5 laminectomy and discectomy, on February 21, 2012.

In a letter dated May 22, 2012, identified by the claimant at the CCH as her causation letter for the claimed extent-of-injury conditions, Dr. BC stated:

. . . this [claimant] has a significant work-related injury that ended up needing a surgical decompression of the L4-5 left sided disc. Produced a significant symptomatology and pain that has affected the [claimant] to the point that surgery was approved and it was performed at the level of the left side consistent with L5-S1 disc

herniation. The [claimant] shows later on a herniation to the area of the right side that it was consistent with symptomatology of the L4-5 on the opposite side. Apparently due to displacement of the disc after a decompression which is something that has been proved and described from the literature.

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 APD 110054, decided March 21, 2011, the Appeals Panel stated that “[a]lthough the claimed conditions are listed in the record, there is not any explanation of causation for the claimed conditions in the record. We hold that in this case the mere recitation of the claimed conditions in the medical records without attendant explanation how those conditions may be related to the compensable injury does not establish those conditions are related to the compensable injury within a reasonable degree of medical probability.”

In this case, the hearing officer in her Background Information section of her decision, states that proof of causation by expert evidence is required for the claimed diagnosed L4-5 disc extrusion/fragment. We agree.

Based on the medical records as discussed above and the mechanism of injury, the hearing officer determined that the evidence was sufficient to establish a causal relationship between the L4-5 disc extrusion/fragment and the compensable injury (which includes a lumbar sprain/strain and L5-S1 disc herniation as accepted by the carrier). We disagree. Dr. S opined about the possibility of nucleus material at L5-S1 level going to the right side. But his medical opinion does not causally link the claimed L4-5 disc extrusion/fragment to the compensable injury. Likewise, Dr. BC opined about the possibility of the opening of the annulus and removal of the foraminal disc on one side causing the other side to become weaker and more prone for herniation. But Dr. BC's medical opinion does not causally link the claimed L4-5 disc extrusion/fragment to the compensable injury. Accordingly, we reverse the hearing officer's determination that the compensable injury of [date of injury], extends to L4-5 disc extrusion/fragment and render a new decision that the compensable injury of [date of injury], does not extend to L4-5 disc extrusion/fragment.

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.**

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge