APPEAL NO. 121905
FILED DECEMBER 20, 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 July 2, 2012, with the record closing on August 6, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the disputed issues, the hearing officer determined that: (1) the compensable injury of [date of injury], extends to cervical radiculitis, left shoulder sprain/strain, and bilateral knee derangement; (2) the compensable injury of [date of injury], does not extend to a left knee medial meniscus tear; (3) the respondent/cross-appellant (claimant) has not reached maximum medical improvement (MMI) and no impairment rating (IR) may be assigned; and (4) the claimant had disability from February 27 through July 2, 2012, the date of the CCH.

The appellant/cross-respondent (self-insured) appealed the extent-of-injury determinations adverse to it and contended that the MMI date and IR assessed by the designated doctor should have been adopted and that the claimant did not have disability. The claimant responded, urging affirmance on the issues on which she had prevailed and in an untimely cross-appeal, appealed the determination that the compensable injury did not extend to a left knee medial meniscus tear. The appeal file does not contain a response to the claimant's untimely cross-appeal.

The hearing officer's determination that the compensable injury of [date of injury], does not extend to a left knee medial meniscus tear was not timely appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that she was a longtime employee of the self-insured and that on [date of injury], she fell forward on her knees. The medical records reflect that the claimant was treated by the school nurse and then was seen by the self-insured's choice of doctor on [date of injury], who diagnosed bilateral knee contusions. The self-insured has accepted bilateral knee contusions as the compensable injury.

UNTIMELY CROSS-APPEAL

The deemed date of receipt of the hearing officer's decision by the claimant was August 28, 2012. An appeal to be timely had to be filed by Friday, September 21, 2012. The claimant's response and cross-appeal is dated September 27, 2012, was sent by facsimile transmission on September 27, 2012, and was date-stamped received by the Texas Department of Insurance, Division of Workers' Compensation on September 27,

2012. The claimant's response was timely as a response and was considered for that purpose. However, the claimant's cross-appeal was not timely and was not considered.

EXTENT OF INJURY AS TO CERVICAL RADICULITIS AND LEFT SHOULDER SPRAIN/STRAIN

The hearing officer's determination that the compensable injury of [date of injury], extends to cervical radiculitis and left shoulder sprain/strain is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY AS TO BILATERAL KNEE DERANGEMENT

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 saw [Dr. D] on [date of injury], the date of the compensable injury. Dr. D diagnosed bilateral knee contusions. The self-insured has accepted the bilateral knee contusions as the compensable injury. The claimant subsequently began treating with [Dr. M], the treating doctor. In a report dated April 7, 2011, regarding the claimant's knee injury, Dr. M diagnosed contusion of bilateral knees. This diagnosis, regarding the knees, is repeated in several subsequent reports. In a report dated August 26, 2011, Dr. M diagnoses a "[c]ruciate ligament tear (left)" and "[d]erangement of knee." That diagnosis is repeated in several other reports. In a report dated December 16, 2011, Dr. M, in the history, noted that the claimant "developed excruciating bilateral knee pain immediately after the accident. . . ." Dr. M also noted mild thinning of the posterior horn of the left medial meniscus and continued a diagnosis, regarding the knees, of medial meniscus ligament tear (left), and derangement of the knee. In a "Letter of Causation" dated January 3, 2012, Dr. M discussed how the compensable injury caused other conditions but the only reference to the knees was in the diagnosis of "[m]eniscus tear (left knee), derangement of knee." We note that Dr. M uses knee in the singular, apparently referencing the left knee. In another report dated March 21, 2012, relating to causation, Dr. M repeats the diagnosis of "[m]eniscus tear (left knee), derangement of knee."

[Dr. S], the treating surgeon, in reports dated May 18, 2011, June 29, 2011, and August 17, 2011, regarding the knees, only gives an impression of "[c]ontusion of bilateral [k]nees." In reports dated August 25, 2011, and September 7, 2011, Dr. S changes his diagnosis, regarding the knees, to "[c]ruciate ligament tear (left) [d]erangement of knee."

Dr. M testified at the CCH and discussed several of the conditions at issue but did not mention bilateral knee derangement. Regarding the knees, Dr. M stated "without a doubt" the compensable fall resulted in a tear of the medial meniscus of the left knee, but did not mention bilateral knee derangement. Conversely, [Dr. G] a self-insured peer-review doctor, testified at the CCH, stating that the compensable injury did not cause a medial meniscus tear of the left knee and "does not include any kind of derangement." In fact, there is no reference, much less expert medical opinion of causation, regarding bilateral knee derangement in any of the medical records or testimony at the CCH.

How a fall to the knees would cause internal derangement of both knees, in this case, requires expert medical evidence within a reasonable medical probability. There was none. Accordingly, we reverse the hearing officer's determination that the compensable injury of [date of injury], extends to bilateral knee derangement and render a new decision that the compensable injury of [date of injury], does not extend to bilateral knee derangement.

MMI AND IR

The hearing officer's determination that the claimant has not reached MMI and no IR may be assigned is supported by sufficient evidence and is affirmed.

DISABILITY

The period of disability at issue is from February 27 through July 2, 2012, the date of the CCH.[1] The hearing officer's determination that the claimant had disability from February 27 through July 2, 2012, the date of the CCH, is supported by sufficient evidence and is affirmed.

SUMMARY

[1] In the Background Information portion of her decision, the hearing officer makes a clerical error by referring to the female claimant as a "he" and the beginning date of disability in the disputed issue. However, the hearing officer's determination in Conclusion of Law No. 6, that the claimant had disability from February 27 through July 2, 2012, the date of the CCH, is supported by sufficient evidence being the claimant's testimony and a Work Status Report (DWC-73) dated March 21, 2012, releasing the claimant to return to work on that date with restrictions.

The hearing officer's determination that the compensable injury of [date of injury], extends to cervical radiculitis and the left shoulder sprain/strain is affirmed.

The hearing officer's determination that the compensable injury of [date of injury], extends to bilateral knee derangement is reversed and a new decision is rendered that the compensable injury of [date of injury], does not extend to bilateral knee derangement.

The hearing officer's determination that the claimant has not reached MMI and no IR may be assigned is affirmed.

The hearing officer's determination that the claimant had disability from February 27 through July 2, 2012, the date of the CCH, is affirmed.

The true corporate name of the insurance carrier is **[a self-insured governmental entity]** and the name and address of its registered agent for service of process is

[SUPERINTENDENT]
[ADDRESS]
[CITY, TEXAS ZIP].

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge