APPEAL NO. 122027
FILED NOVEMBER 19, 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 August 29, 2012, in [City], Texas with [hearing officer] presiding as hearing officer. With regard to the only issue before her, the hearing officer determined that the respondent's (claimant) [date of injury], compensable injury extends to an aggravation of spondylolisthesis at L4-5, lumbar stenosis, and lumbar radiculopathy at L4-5.

The appellant (carrier) appealed, contending that the hearing officer's decision is not supported by definitive medical evidence. The claimant responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that she was an account development specialist who demonstrates cosmetics. The claimant has a "rolling suitcase" where she keeps materials for her work. The claimant testified that on [date of injury], she was going down an escalator when her bag got caught, causing her to fall down the length of the escalator. The parties stipulated that the claimant sustained a compensable injury on [date of injury].[1] The carrier has accepted a lumbar strain and left thigh contusion.

EXTENT OF INJURY

Aggravation of Spondylolisthesis at L4-5 and Lumbar Radiculopathy at L4-5

The hearing officer's determination that the [date of injury], compensable injury extends to an aggravation of spondylolisthesis at L4-5 and lumbar radiculopathy at L4-5 is supported by sufficient evidence and is affirmed.

Lumbar Stenosis

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*

[1] Although not listed in the hearing officer's decision, the parties also stipulated that [Dr. C] was the designated doctor for extent of injury.

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).

When injury is asserted to have occurred by way of aggravation of a pre-existing condition, there must be evidence that there was a pre-existing condition and there was some enhancement, acceleration, or worsening of the underlying condition. The burden of proving that there is a compensable injury or aggravation of a pre-existing condition is on the claimant. *See* APD 001825, decided September 12, 2000.

The medical records are clear that the claimant suffered from pre-existing degenerative lumbar stenosis. The question is whether there is sufficient expert medical evidence based on reasonable medical probability to establish that the claimant's fall down an escalator stairway on [date of injury], caused an aggravation of lumbar stenosis. A peer review by [Dr. W] dated August 3, 2011, noted "an aggravation of the arthritic changes within the lumbar spine specifically at this level [L4-5]," mentioning the conditions that we have affirmed. That report makes no mention of lumbar stenosis other than to recite the findings of a July 11, 2011, MRI which mentions the spondylolisthesis "as well as spinal canal borderline stenosis" at the L4-5 level.

[Dr. E] the treating doctor, in a report dated December 16, 2010, commented that the claimant "has stenosis at L4-5" but does not state how the compensable fall down the escalator caused or aggravated that condition. A report dated February 23, 2012, from Dr. E connects the mechanism of the injury to some of the claimant's claimed conditions but does not mention lumbar stenosis. Another report, dated November 1, 2011, mentions the mechanism of injury and states it could have aggravated or exacerbated the pre-existing spondylolisthesis at L4-5 and separately stated that the claimant "has been demonstrated to have stenosis at L3-4."

Dr. C, the designated doctor, was asked to give an opinion whether the compensable injury caused, aggravated or exacerbated several conditions, including "stenosis." In a report dated March 15, 2012, Dr. C addressed some of the other conditions but does not comment on lumbar stenosis.

In this case, the mention of stenosis in some records, without an attendant explanation how that condition may be related to the compensable injury does not establish that condition as being related to the compensable injury within a reasonable degree of medical probability, particularly where, as in this case, expert medical opinion affirmatively states that there is no causation of the claimed condition to the compensable injury. The hearing officer's determination that the compensable injury

extends to lumbar stenosis is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

Accordingly, we reverse the hearing officer's determination that the [date of injury], compensable injury extends to lumbar stenosis and we render a new decision that the claimant's [date of injury], compensable injury does not extend to lumbar stenosis.

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 78701-3218.

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge