APPEAL NO. 122165
FILED DECEMBER 12, 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 September 17, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding: (1) the compensable injury extends to buttocks contusion, herniated nucleus pulposus (HNP) at L5-S1, and lumbar radiculitis; (2) the appellant/cross-respondent (claimant) has not reached maximum medical improvement (MMI); (3) because the claimant has not reached MMI, no impairment rating (IR) can be assessed; and (4) the claimant had disability resulting from the compensable injury from October 15, 2011, through the CCH.

The claimant appealed, noting that the hearing officer mistakenly included a stipulation in her decision and order that was not made by the parties at the CCH. Additionally, the claimant appeals Finding of Fact No. 6 because it mistakenly refers to the respondent/cross-appellant's (carrier) required medical examination (RME) doctor as the designated doctor. The appeal file does not contain a response to the claimant's appeal from the carrier.

However, the carrier cross-appealed, disputing the hearing officer's determinations of extent of injury, MMI, IR, and disability. The claimant responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part as reformed and reversed and rendered in part.

The claimant testified that he was at work when he slipped and fell backwards, landing on the ground. The parties stipulated that [Dr. K] was appointed by the Texas Department of Insurance, Division of Workers' Compensation to determine MMI, IR, the extent of the compensable injury, and disability.

The claimant correctly notes in his appeal that the hearing officer mistakenly included a stipulation in her decision and order that the parties did not agree to. We strike stipulation 1.H. which states, "[u]pon referral by [the] [c]laimant's treating doctor, [NM] certified that the [c]laimant reached MMI on the statutory date of February 17, 2012, with an 11% IR" from the decision and order because a review of the record does not indicate that the parties made such stipulation.

We note that the hearing officer mistakenly referred to the carrier RME doctor, [Dr. Kl] as the designated doctor in Finding of Fact No. 6. We reform Finding of Fact No. 6 to correctly identify Dr. Kl as the carrier's RME doctor.

Additionally, the hearing officer made a clerical error in Finding of Fact No. 7. The hearing officer found that "[f]urther material recovery from and lasting improvement to [the] [c]laimant's injury could reasonably be anticipated after April 19, 2011." A review of the record indicates that both the designated doctor, Dr. K, and the carrier's RME doctor, Dr. Kl, certified that the claimant reached MMI on August 19, 2011. Finding of Fact No. 7 is reformed to read that further material recovery from and lasting improvement to the claimant's injury could reasonably be anticipated after August 19, 2011.

It is undisputed that the carrier has accepted a lumbar sprain/strain as the compensable injury. At issue was whether the compensable injury extends to buttocks contusion, an HNP at L5-S1, and lumbar radiculitis.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury extends to buttocks contusion and an HNP at L5-S1 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 (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 evidence are medical records which diagnose the claimant with lumbar radiculitis. However, the medical records do not explain how the compensable injury would cause or aggravate lumbar radiculitis. The causation letter relied upon by the hearing officer dated May 31, 2012, from [Dr. P] notes that the claimant was diagnosed with lumbar radiculitis but does not relate such diagnosis to the mechanism of the injury.

Under the facts of this case, the diagnosis of lumbar radiculitis without attendant explanation by any doctor or expert of how this condition may be related to the compensable injury does not establish lumbar radiculitis is related to the compensable injury within a reasonable degree of medical probability. *See* State Office of Risk Mgmt.

v. Adkins, 347 S.W.3d 394 (Tex. App.-Dallas, 2011, no pet.), Transcontinental Insurance Company v. Crump, 330 S.W.3d 211 (Tex. 2010), and APD 101323-s, decided November 8, 2010. The hearing officer's finding that the claimant's lumbar radiculitis arose out of or naturally flowed from the [date of injury], compensable injury 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 decision that the compensable injury of [date of injury], extends to lumbar radiculitis. We render a new decision that the compensable injury of [date of injury], does not extend to lumbar radiculitis.

MMI/IR

Dr. P, in a medical report dated April 17, 2012, stated that the claimant is not at MMI pending further orthopedic evaluation to determine if further epidural steroid injections (ESI) to the lumbar spine are indicated or if surgical intervention is indicated to the lumbar spine. The evidence reflects that ESIs were being performed to treat the HNP at L5-S1.

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

DISABILITY

The hearing officer's determination that the claimant had disability resulting from the compensable injury from October 15, 2011, through the CCH is supported by sufficient evidence and is affirmed.

SUMMARY

The hearing officer's determination that the compensable injury extends to buttocks contusion and HNP at L5-S1 is affirmed.

The hearing officer's determination that the claimant has not reached MMI and therefore, no IR can be assessed is affirmed.

The hearing officer's determination that the claimant had disability resulting from the compensable injury from October 15, 2011, through the CCH is affirmed.

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

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

CINDY GHALIBAF
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IRVING, TEXAS 75039-3711.

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge