

APPEAL NO. 122474
FILED JANUARY 29, 2013

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 October 24, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the sole disputed issue by deciding that the compensable injury of [date of injury], does extend to bilateral carpal tunnel syndrome (CTS), bilateral trigger thumb, and left deQuervain's. The appellant (carrier) appeals the hearing officer's extent-of-injury determination, contending that there is no or insufficient expert evidence causally relating the claimed extent-of-injury conditions to the work injury. The appeal file does not contain a response from the respondent (claimant).

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury, in the form of bilateral wrist sprain/strains, on [date of injury]. In her Background Information, the hearing officer stated that "[the] [c]laimant testified that she has been employed as an account specialist for [employer] for approximately 17 years and that her job duties require data entry eight hours a day, five days per week."

The record indicates that the claimant was examined at [Clinic 1] where she was diagnosed with bilateral CTS and referred to a hand specialist. Prior to her examination at [Clinic 1], the claimant had been examined by a hand specialist, [Dr. H] at the [Clinic 2].

On September 7, 2011, the claimant had an EMG/NCV which revealed findings of CTS and left deQuervain's tenosynovitis. The claimant underwent surgery performed by Dr. H on September 23, 2011, for the left wrist, and on September 30, 2011, for the right wrist. Subsequent to the surgeries, in February of 2012, the claimant saw Dr. H for bilateral thumb pain and thumbs "locking up." Dr. H diagnosed bilateral trigger thumb.

In her Background Information, the hearing officer stated:

[The] [c]laimant attempted to get a causation analysis from Dr. [H] in response to the reports of Drs. [(Dr. D), a carrier-selected peer review doctor] and [(Dr. DN), a required medical examination doctor] but she was unsuccessful. However, considering the mechanism of injury, the testimony of [the] [c]laimant and the medical records, the evidence presented is sufficient to establish [a] causal relationship between the [c]laimant's diagnosed bilateral CTS, bilateral trigger thumb, and left deQuervain's and the compensable injury she sustained on [date of injury].

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 reviewing a “great weight” challenge, we must examine the entire record to determine if the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. See Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In evidence is a medical record, dated August 15, 2011, in which Dr. H at the [Clinic 2] states:

[The claimant] [complains of] bilateral hand numbness, pain and tingling x 9-10 years. Left [greater than] right. In 2009 she was getting one steroid injection in each wrist every 3 months x 4 visits.

After assessing bilateral CTS and deQuervain’s tenosynovitis, Dr. H states in the sections regarding treatment for the conditions that the claimant has evidence of the disputed conditions consistent with the claimant’s history and physical examination.

Also in evidence is the [Clinic 1] record dated August 29, 2011, states:

[The claimant] reports that she began having severe pain in her left hand and forearm for the past month. She also reports some tingling of her left fingertips. She reports having intermittent numbness and tingling of her right hand and fingers over the past couple of years that has worsened over the past one and a half months. Due to the worsening of symptoms, [the claimant] went and saw Dr. [H] at the [Clinic 2] and was diagnosed as bilateral [CTS]. After the evaluation, it was determined that her

diagnosis was due to work and thus she was told by her employer to come in and setup a treating physician and get a referral to a hand specialist.

Also in evidence is a medical record dated February 14, 2012, by Dr. H. Dr. H states that the claimant was examined for bilateral thumb pain and that “[t]he [claimant’s] [h]istory and physical is consistent with the diagnosis of stenosing tenovaginitis of the flexor tendons (i.e. trigger finger) of the bilateral thumbs.”

In response to a question of whether Dr. H ever told her that the disputed extent-of-injury conditions were due to her work activities, the claimant testified that “they” never specified work activities but the conditions were due to repetitive work. The claimant further testified that she considered her job duties to be repetitive. The claimant’s testimony did not include any description of those activities other than sitting in front of a computer eight hours a day, five days a week, entering information on members’ accounts and dealing with their car problems. There was no information testified to about the number of keystrokes, whether she used a mouse or keyboard, or any other details of her activities that she considered to be repetitious.

These medical records are not sufficient evidence to establish to a reasonable medical probability by expert evidence that the claimed extent-of-injury conditions were caused by the claimant’s work activities.

Consequently, the hearing officer’s determination that the compensable injury of [date of injury], does extend to bilateral CTS, bilateral trigger thumb, and left deQuervain’s is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We reverse the hearing officer’s determination that the compensable injury of [date of injury], does extend to bilateral CTS, bilateral trigger thumb, and left deQuervain’s, and render a new decision that the compensable injury of [date of injury], does not extend to bilateral CTS, bilateral trigger thumb, and left deQuervain’s.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** 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.**

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge