

APPEAL NO. 131340  
FILED AUGUST 16, 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 (CCH) was held on May 9, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the sole disputed issue by deciding that the [date of injury], compensable injury extends to herniated discs at L4-5 and L5-S1 and lumbar radiculopathy at L5 but does not extend to disc bulges at L4-5 and L5-S1 or intervertebral disc disruption. The appellant (carrier) appeals the adverse portion of the hearing officer's extent-of-injury determination. The appeal file does not contain a response from the respondent (claimant). The hearing officer's determination that the compensable injury does not extend to disc bulges at L4-5 and L5-S1 or intervertebral disc disruption has not been 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], that includes a lumbar sprain/strain; [Dr. T] is (the second) designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) for extent of injury; and [Dr. N] is (the first) designated doctor appointed by the Division for extent of injury. The claimant testified he was injured at work on [date of injury], while lifting 60 to 75-pound bags of coins. At the CCH the claimant relied on letters from [Dr. V] and [Dr. C] to establish causation between the compensable injury and herniated discs at L4-5 and L5-S1 and L5 radiculopathy.

The earliest record in evidence discussing herniated discs at L4-5 and L5-S1 is a progress note from Dr. C dated July 17, 2008, in which Dr. C notes that an MRI was performed and demonstrated herniated discs at L4-5 and L5-S1 with bilateral foraminal stenosis. In another progress note dated August 18, 2008, Dr. C states "[r]eview of an MRI of lumbar spine showed L4-5 and L5-S1 disc protrusion by 3 mm touching the thecal sac;" and lists an assessment of L4-L5 and L5-S1 herniated disc. In a progress note dated October 13, 2008, Dr. C notes that the claimant has pathology at L4-5 and L5-S1 with bilateral foraminal encroachment and narrowing at both levels, and in another progress note dated December 8, 2008, Dr. C notes the claimant has pathology at L4-5 and L5-S1. In a letter dated June 1, 2009, Dr. C states: ". . . it is my medical opinion that [the claimant] has a compensable injury. . . ." Dr. C does not mention a specific diagnosis in this letter.

The earliest medical record that notes L5 radiculopathy is an EMG dated April 3, 2012, which lists a conclusion of chronic left L5 radiculopathy. The earliest discussion of L5 radiculopathy is a letter from Dr. V dated July 16, 2012, in which Dr. V stated that the diagnosis for the [date of injury], compensable injury based on the mechanism of injury “is one of chronic back problems stemming out of the job injury with persistence of symptoms of left thigh and buttocks burning (chronic left L5 radiculopathy).” Dr. V also stated that the disc problems are the cause for the lumbar radiculopathy.

The Texas courts have long established the general rule that “expert testimony is necessary to establish causation as to medical conditions outside the common knowledge and experience” of the fact finder. Guevara v. Ferrer, 247 S.W.3d 662 (Tex. 2007). 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 City of Laredo v. Garza, 293 S.W.3d 625 (Tex. App.-San Antonio 2009, no pet.) citing Guevara.

Under the circumstances of this case, herniated discs at L4-5 and L5-S1 diagnosed in July of 2008 and lumbar radiculopathy at L5 diagnosed in April of 2012 for a compensable injury sustained on [date of injury], are conditions that are a matter beyond common knowledge or experience and would require expert medical evidence. In the Background Information section of the decision the hearing officer noted that these letters were not persuasive. We agree that the letters from Dr. C and Dr. V relied upon by the claimant fail to establish causation between the compensable injury and herniated discs at L4-5 and L5-S1 and lumbar radiculopathy at L5.

However, the hearing officer determined that the compensable injury extends to herniated discs at L4-5 and L5-S1 and lumbar radiculopathy at L5. The hearing officer noted in the Background Information section of the decision that Dr. N and Dr. T were designated doctors appointed by the Division to determine extent of injury, and that the designated doctors’ opinions on extent of injury were more persuasive than the other medical evidence.

Dr. N, the first designated doctor, examined the claimant on June 4, 2008, to determine maximum medical improvement (MMI), impairment rating, and extent of injury. Dr. N certified that the claimant had not reached MMI but was expected to do so on or about September 4, 2008. In an attached narrative report Dr. N opined the following regarding extent of injury:

[The claimant] suffers more than a lumbar strain as a result of lifting a 50-75 pounds bag of quarter (*sic*) while working at the bank. The recent

lumbar MRI reveals . . . herniated disc at L4-5 and L5-S1. These findings can be due to disease of life or to acute aggravating injury. [The claimant] is only 30-year-old and never has had any problem with his back until the date of injury.

Dr. N did not provide an explanation of causation between the compensable injury and herniated discs at L4-5 and L5-S1.

Dr. T, the second designated doctor, examined the claimant on October 16, 2012, to determine extent of injury. In a narrative report dated that same date, Dr. T notes diagnoses of intervertebral disc disruption and lumbar radiculopathy. On April 17, 2013, in response to a letter of clarification, Dr. T clarified that the level of radiculopathy is at L5. Dr. T did not provide any explanation of causation between the compensable injury and radiculopathy at L5.

Although Dr. N diagnosed the claimant with herniated discs at L4-5 and L5-S1, and Dr. T diagnosed the claimant with L5 radiculopathy, neither Dr. N's nor Dr. T's extent-of-injury opinions contain an explanation how the compensable injury sustained on [date of injury], caused herniated discs at L4-5 and L5-S1 and lumbar radiculopathy at L5. Accordingly, we reverse the hearing officer's determination that the [date of injury], compensable injury extends to herniated discs at L4-5 and L5-S1 and lumbar radiculopathy at L5, and we render a new decision that the [date of injury], compensable injury does not extend to herniated discs at L4-5 and L5-S1 and lumbar radiculopathy at L5.

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

**DIANE MORRIS, PRESIDENT  
3420 EXECUTIVE CENTER DRIVE, SUITE 200  
AUSTIN, TEXAS 78766.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge