

APPEAL NO. 132109  
FILED OCTOBER 25, 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 July 29, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [date of injury], does not extend to right elbow lateral epicondylitis, right wrist sprain/strain, left wrist sprain/strain, lumbar disc protrusion at L5-S1, and lumbar radiculopathy; (2) the compensable injury of [date of injury], extends to thoracic sprain/strain and left hip sprain/strain; (3) the appellant (claimant) reached maximum medical improvement (MMI) on June 28, 2012; and (4) the claimant's impairment rating (IR) is zero percent per [Dr. Z], the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine MMI and IR.

The claimant appealed the hearing officer's determinations that were adverse to her, contending that those determinations were so against the great weight and preponderance of the credible evidence as to be manifestly unjust. The claimant also contends that the hearing officer held her to a higher burden of proof regarding bilateral wrist sprains/strains and right elbow lateral epicondylitis. The respondent (carrier) responds, urging affirmance.

The hearing officer's determination that the compensable injury of [date of injury], extends to thoracic sprain/strain and left hip sprain/strain was not appealed and has become final pursuant to Section 410.169.

**DECISION**

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], and that the compensable injury extends to a cervical sprain/strain, a lumbar sprain/strain, a thoracic sprain/strain, and a left hip sprain/strain. The claimant, a delivery driver for the employer, testified that she was injured in a motor vehicle accident when she rear-ended another vehicle.

**EXTENT OF INJURY**

That portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to right elbow lateral epicondylitis, lumbar disc protrusion at L5-S1, and lumbar radiculopathy is supported by sufficient evidence and is affirmed.

The hearing officer also determined that the compensable injury of [date of injury], does not extend to right wrist sprain/strain and left wrist sprain/strain. In the Background Information section of the decision, the hearing officer states the following:

The injuries [c]laimant asserts were sustained in the accident are not overt injuries, such as broken bones or lacerations, whose causal relationship with the accident would ordinarily be within the general experience and common knowledge of laypersons. Expert medical testimony establishing the causal connection within reasonable medical probability is therefore necessary. The expert opinion offered by [c]laimant from her treating doctor . . . does not . . . address the causation of the diagnosed bilateral wrist strains. . . .

The Appeals Panel has, on numerous occasions, rejected the contention that a sprain/strain requires expert medical evidence to establish causation. See Appeals Panel Decision (APD) 130160, decided March 18, 2013; APD 120383, decided April 20, 2012; APD 992946, decided February 14, 2000; APD 952129, decided January 31, 1996. See *also* APD 130808, decided May 20, 2013. In the case on appeal, the hearing officer is requiring expert medical evidence to establish causation between the compensable injury and right wrist sprain/strain and left wrist sprain/strain. The hearing officer is requiring a higher standard than that required under the law, as cited in this decision, to establish causation. See APD 130915, decided May 20, 2013. Accordingly, we reverse that portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to right wrist sprain/strain and left wrist sprain/strain, and we remand that portion of the extent-of-injury issue to the hearing officer to make a determination using the proper legal standard consistent with this decision.

Given that we have reversed and remanded the extent-of-injury determination to the hearing officer, we also reverse the hearing officer's determinations that the claimant reached MMI on June 28, 2012, with a zero percent IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

## **SUMMARY**

We affirm that portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to right elbow lateral epicondylitis, lumbar disc protrusion at L5-S1, and lumbar radiculopathy.

We reverse that portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to right wrist sprain/strain and left wrist sprain/strain, and we remand that portion of the extent-of-injury determination to

the hearing officer to make a determination using the proper legal standard consistent with this decision.

We reverse the hearing officer's determinations that the claimant reached MMI on June 28, 2012, with a zero percent IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

Dr. Z is the designated doctor in this case. The hearing officer is to determine whether Dr. Z is still qualified and available to be the designated doctor. If Dr. Z is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to 28 TEX. ADMIN. CODE § 127.5(c) (Rule 127.5(c)) to determine MMI and the IR.

The hearing officer is to make a determination whether the compensable injury of [date of injury], extends to right wrist sprain/strain and/or left wrist sprain/strain. Based on the hearing officer's determination regarding the right wrist sprain/strain and left wrist sprain/strain, the hearing officer is then to determine whether a certification of MMI and IR that rates the entire injury is in evidence or whether a new certification of MMI and IR by the designated doctor is necessary. If a new certification of MMI and IR is necessary, the hearing officer is to inform the designated doctor that the compensable injury of [date of injury], extends to a cervical sprain/strain, a lumbar sprain/strain, a thoracic sprain/strain, a left hip sprain/strain, right wrist sprain/strain and/or left wrist sprain/strain, depending upon the hearing officer's determination on that issue.

The parties are to be provided with the hearing officer's letter to the designated doctor, the designated doctor's response, and to be allowed an opportunity to respond. The hearing officer is to make determinations which are supported by the evidence on extent of injury, MMI, and IR consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ZURICH AMERICAN 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.**

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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