

APPEAL NO. 132121
FILED NOVEMBER 20, 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 August 2, 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], extends to right shoulder impingement, sciatica, left sacroiliitis, and lumbosacral radiculitis at left L5-S1; (2) the compensable injury of [date of injury], does not extend to thoracic radiculitis; (3) the respondent (claimant) has not reached maximum medical improvement (MMI); (4) an impairment rating (IR) is premature because the claimant has not reached MMI; and (5) the average weekly wage (AWW) is \$550.90.

The appellant (carrier) appeals the hearing officer's determinations of extent of the compensable injury that are adverse to it, contending that the claimant failed to present reliable expert medical evidence of causation to prove the compensability of the claimed conditions. The carrier additionally argues that the hearing officer's determination that the claimant has not reached MMI is incorrect since the recommended surgery has been denied. They further argue that the hearing officer miscalculated the AWW. The appeal file does not contain a response from the claimant. The hearing officer's determination that the compensable injury does not extend to thoracic radiculitis was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that: (1) the claimant sustained a compensable injury on [date of injury]; (2) the carrier has accepted a right shoulder sprain/strain and a lumbar sprain/strain as part of the compensable injury; (3) thoracic radiculitis is not part of the compensable injury; (4) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed [Dr. A] as the designated doctor for the purposes of MMI and IR; (5) the Division-appointed designated doctor, Dr. A, certified that the claimant reached MMI on January 22, 2013, and assigned a five percent IR; and (6) for purposes of AWW, there are not 13 weeks of wages for the claimant prior to the date of injury and there is no same or similar employee available for comparison. The claimant testified that he injured his shoulder and low back when he was involved in a motor vehicle accident while performing his job duties.

AWW

The hearing officer's determination that the claimant's AWW is \$550.90 is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], extends to right shoulder impingement and lumbosacral radiculitis at left L5-S1 is supported by sufficient evidence and is affirmed.

The hearing officer also determined that the compensable injury extends to sciatica and left sacroiliitis.

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).

The conditions of sciatica and left sacroiliitis are conditions that require expert evidence to establish a causal connection with the compensable injury. The hearing officer states in the Background Information of his decision that "[t]he [c]laimant has provided causation analyses that are both sufficient and persuasive from [Dr. G] and Dr. L]. Each provides an explanation of the mechanism of injury, an explanation how the mechanism is related to each condition, and how, in reasonable medical probability, the mechanism of injury caused the disputed conditions." Dr. G, in her letter dated July 12, 2013, concluded that the compensable injury caused the claimant's diagnosed right shoulder sprain/strain, lumbar sprain/strain, right shoulder impingement, and lumbosacral radiculitis. However, Dr. G does not discuss the conditions of sciatica or left sacroiliitis. Dr. L, in a medical narrative dated August 1, 2013, concluded that regarding the lumbar spine, the extent of injury "includes a soft tissue injury to the lumbar spine resulting in lumbar sprain/strain based on his mechanism of injury, his clinical exam and his MRI scan findings which are fairly nonspecific and do not indicate any significant injury to the lumbar spine with some pre-existing changes noted at multiple levels."

Dr. G referred the claimant to [Dr. T] for consideration of a trigger point injection and/or facet joint injection. In a New Patient Evaluation dated May 23, 2013, Dr. T lists

sciatica and sacroiliitis necropathy among the diagnoses, but he fails to explain how they are related to the compensable injury. Although the conditions are listed in the record there is not any explanation of causation for the conditions in the record. 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. APD 110054, decided March 21, 2011.

As there are no medical records, including the records from Dr. G, Dr. L, and Dr. T, that explain how the injury of [date of injury], caused the claimed conditions, the hearing officer's determination is against the great weight and preponderance of the evidence. We reverse the hearing officer's determination that the compensable injury of [date of injury], extends to sciatica and left sacroiliitis, and we render a new decision that the compensable injury of [date of injury], does not extend to sciatica and left sacroiliitis.

MMI/IR

The hearing officer's determinations that the claimant has not reached MMI and an IR is therefore premature are supported by sufficient evidence and are affirmed. The hearing officer based this determination on the certification of [Dr. H], a doctor selected by the treating doctor to act in his place, who examined the claimant on March 25, 2013. Dr. H found that the claimant had not reached MMI because the claimant was still suffering from treatable effects of the injury and progressive deconditioning. Specifically, Dr. H states that he disagreed that the claimant has reached MMI "as the claimant demonstrates objective signs of right shoulder impingement which, based on medical necessity, requires surgical intervention." As previously mentioned, the hearing officer's determination that the compensable injury extends to right shoulder impingement has been affirmed. The evidence in the record indicates that the claimant has not had surgery for his right shoulder, which is reasonably anticipated to improve the claimant's compensable condition of right shoulder impingement.

SUMMARY

We affirm the hearing officer's determination that the claimant's AWW is \$550.90.

We affirm the hearing officer's determination that the compensable injury of [date of injury], extends to right shoulder impingement and lumbosacral radiculitis at left L5-S1.

We affirm the hearing officer's determinations that the claimant has not reached MMI and an IR is therefore premature.

We reverse the hearing officer's determination that the compensable injury of [date of injury], extends to sciatica and left sacroiliitis, and we render a new decision that the compensable injury of [date of injury], does not extend to sciatica and left sacroiliitis.

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

**RICHARD J. GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge