

APPEAL NO. 132361
FILED DECEMBER 6, 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 22, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the two issues before him, the hearing officer determined that: (1) the compensable injury of [date of injury], extends to lumbar radiculitis, but not lumbar disc displacement or lumbar disc protrusions at L3-4, L4-5, and L5-S1; and (2) the respondent/cross-appellant (claimant) had disability from September 3 through December 5, 2012, and February 17, 2013, through the present.

The appellant/cross-respondent (carrier) appealed the hearing officer's determinations on disability and extent of injury that were adverse to it. The carrier contends on appeal that there is insufficient causation evidence to support extent of the injury to include lumbar radiculitis. It further argues that the claimant was initially released to return to work full duty, and therefore, did not have disability during the periods in dispute. The claimant appealed the determinations of extent of injury that were adverse to him, arguing that he did present sufficient evidence of causation to prove compensability of those conditions. The claimant responded to the carrier's appeal, urging affirmance of the issues on which he prevailed. Additionally, the carrier responded to the claimant's cross-appeal, urging affirmance of the issues on which it prevailed.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that: (1) on [date of injury], the claimant sustained a compensable injury, and the compensable injury includes a lumbar sprain/strain; and (2) [Dr. M] is the designated doctor for extent of injury, return to work, and direct result. The claimant testified that he injured his back while working as a housekeeping supervisor and he lifted heavy bags filled with dirty linens.

DISABILITY

The hearing officer's determination that the claimant had disability from September 3 through December 5, 2012, and February 17, 2013, through the present is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

The hearing officer's determinations that the compensable injury of [date of injury], does not extend to lumbar disc displacement or lumbar disc protrusions at L3-4, L4-5, and L5-S1 are supported by sufficient evidence and are affirmed.

The hearing officer also determined that the compensable injury extends to lumbar radiculitis.

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 condition of lumbar radiculitis is a condition that requires expert evidence to establish a causal connection with the compensable injury. Regarding extent of injury, the hearing officer in the Background Information section states: "[Dr. M's] report was more persuasive than the other medical evidence. The preponderance of the other medical evidence is not contrary to [Dr. M's] opinion on extent of injury." Dr. M in his narrative report dated July 25, 2013, concluded that the compensable injury is a lumbar strain/sprain and lumbar radiculitis. He additionally found that the disc herniations were preexisting. In discussing lumbar radiculitis, Dr. M stated that "[the claimant's] symptoms from the [date of injury] (radiculitis) are most probably from an exacerbation of his preexisting condition (disc herniation)." However, Dr. M fails to adequately explain how the compensable lumbar strain/sprain injury could or did cause lumbar radiculitis. The Appeals Panel has held that the mere recitation of the claimed conditions in the medical records without attendant explanation of 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.

Also in evidence is a causation letter dated August 13, 2013, from [Dr. N], the treating doctor. Dr. N concludes that the compensable injury extends to lumbar disc herniation at L3-4, L5-S1, and lumbar radiculopathy from L5-S1. He does not address the condition of lumbar radiculitis.

As there are no medical records, including the records from Dr. M and Dr. N, that explain how the injury of [date of injury], caused lumbar radiculitis, 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 lumbar radiculitis, and we render a new decision that the compensable injury of [date of injury], does not extend to lumbar radiculitis.

SUMMARY

We affirm the hearing officer's determination that the claimant had disability from September 3 through December 5, 2012, and February 17, 2013, through the present.

We affirm the hearing officer's determination that the compensable injury of [date of injury], does not extend to lumbar disc displacement or lumbar disc protrusions at L3-4, L4-5, and L5-S1.

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

The true corporate name of the insurance carrier is **NEW HAMPSHIRE 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 78701-3232.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge