

APPEAL NO. 132853  
FILED FEBRUARY 13, 2014

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 March 28, 2013, with the record closing on October 21, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that: (1) the compensable injury of [date of injury], extends to T1-2 herniated nucleus pulposus (HNP), C3-4, C4-5, C5-6, and C6-7 aggravation of the degenerative disc disease and disc bulges, clinical instability at C5-6 and C6-7, right sided C5 and C6 radiculopathy, and aggravation of cervical spondylosis; (2) the compensable injury of [date of injury], does not extend to bilateral carpal tunnel syndrome (CTS).

The appellant/cross-respondent (carrier) appealed the hearing officer's extent-of-injury determination in favor of the claimant, essentially arguing that there is insufficient evidence to establish how the compensable injury caused those conditions. The respondent/cross-appellant (claimant) responded, urging affirmance of that portion of the extent-of-injury determination in favor of the claimant. The claimant also cross-appealed the extent-of-injury determination adverse to him, contending that the evidence established evidence of causation of bilateral CTS. The claimant also pointed out several clerical errors contained in the hearing officer's decision. The appeal file does not contain a response from the carrier to the claimant's cross-appeal.

### DECISION

Reformed in part, affirmed in part, and reversed and rendered in part.

The parties stipulated that on [date of injury], the claimant sustained a compensable injury to at least an injury to the thoracic and cervical spine in the form of a sprain/strain, and that [Dr. D] was appointed by the Texas Department of Insurance, Division of Workers' Compensation to determine extent of injury. The claimant testified that he was injured on the date of injury when a coworker lost his grip on the 600 pound air compressor he and the coworker were lifting.

### CLERICAL ERRORS

The claimant contended that the issue before the hearing officer was to address T11-12 HNP, not T1-2 HNP as contained in the hearing officer's decision. A review of the record reveals the claimant's contention is correct. The issue as worded on the Benefit Review Conference (BRC) Report states the condition at issue is T11-12 HNP, and the parties agreed at the CCH that the condition at issue is T11-12. The parties did

not litigate an HNP at T1-2. We therefore reform the hearing officer's decision by reforming all references to T1-2 HNP to read T11-12 HNP.

The claimant further pointed out that the hearing officer's Conclusion of Law No. 3 and Decision does not correctly reflect a condition that was amended at the CCH. The extent-of-injury issue on the BRC report lists the condition at issue as "C3-4, C4-5, C5-6, and C6-7 aggravation of the degenerative disc disease and disc bulges." However, the parties agreed on the record to amend this condition to read "aggravation of the degenerative disc disease and disc bulges at C3-4, C4-5, C5-6, and C6-7," because the parties believed that the condition as amended was clearer than the condition as worded on the BRC report. We note that the condition was amended to simply move the placement of the cervical levels in dispute to the end of the condition rather than the beginning; the actual condition itself remained the same.

The hearing officer discusses the amended condition in the Background Information section of the decision, and finds in Finding of Fact No. 6 that the compensable injury extends to the condition as amended. However, the hearing officer's Conclusion of Law No. 3 and Decision states that the compensable injury extends to the condition as contained on the BRC report rather than the condition as amended by the parties. The hearing officer made clear in the Background Information section of the decision and in Finding of Fact No. 6 that he believed the compensable injury extended to the condition as amended by the parties. We therefore reform the hearing officer's decision by reforming "C3-4, C4-5, C5-6, and C6-7 aggravation of the degenerative disc disease and disc bulges" as contained in Conclusion of Law No. 3 and the Decision to read "aggravation of the degenerative disc disease and disc bulges at C3-4, C4-5, C5-6, and C6-7" to conform with the issue as amended by the parties.

**T11-12 HNP, AGGRAVATION OF THE DEGENERATIVE DISC DISEASE AND DISC BULGES AT C3-4, C4-5, C5-6, AND C6-7, CLINICAL INSTABILITY AT C5-6 and C6-7, AGGRAVATION OF CERVICAL SPONDYLOSIS, AND BILATERAL CTS**

The hearing officer's determination that the compensable injury extends to T11-12 HNP, as reformed, aggravation of the degenerative disc disease and disc bulges at C3-4, C4-5, C5-6, and C6-7, as reformed, clinical instability at C5-6 and C6-7, and aggravation of cervical spondylosis is supported by sufficient evidence and is affirmed.

The hearing officer's determination that the compensable injury of [date of injury], does not extend to bilateral CTS is supported by sufficient evidence and is affirmed.

## C5 AND C6 RIGHT SIDED AND LEFT SIDED RADICULOPATHY

The claimant correctly argues on appeal that the hearing officer failed to include C5 and C6 left sided radiculopathy in his Conclusions of Law and Decision. The BRC report lists the condition at issue as right sided C5 and C6 radiculopathy; however, the parties agreed on the record to amend that issue to also include left sided C5 and C6 radiculopathy. The hearing officer discusses C5 and C6 right sided and left sided radiculopathy in the Background Information section of the decision, and found in Finding of Fact No. 6 that C5 and C6 right sided and left sided radiculopathy arose out of or naturally flowed from the compensable injury. However, the hearing officer's Conclusion of Law No. 3 and the Decision omitted C5 and C6 left sided 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 facts of this case, C5 and C6 right sided and left sided radiculopathy is a condition that requires expert medical evidence to establish causation.

The only medical record in evidence that provides any discussion of this condition is from Dr. D, the designated doctor appointed to determine extent of injury. In a report dated June 13, 2013, Dr. D stated:

I re-evaluated [the claimant] on [July 20, 2012], in order to determine Extent of Injury. . . . I felt strongly that without the job-related injury, the [claimant] would not have had those problems or level of disease. . . . The [claimant's] original job involved heavy lifting at times with extension of the upper body. As a result of the injury the [claimant] had significant aggravation of an underlying pre-existing cervical spondylosis.

Dr. D then listed a diagnosis of C5 and C6 right sided and left sided as compensable, noting his rationale as:

The injury resulted in the disc herniations with bilateral radiculopathy.

Dr. D does not discuss how the compensable injury caused C5 and C6 right sided and left sided radiculopathy. As the evidence does not contain an explanation of how the compensable injury caused this condition, we reverse the hearing officer's determination that the compensable injury of [date of injury], extends to C5 and C6 right sided radiculopathy, and we render a new decision that the compensable injury of [date of injury], does not extend to C5 and C6 right sided radiculopathy. We reverse the hearing officer's decision as being incomplete and render a new decision that the compensable injury of [date of injury], does not extend to C5 and C6 left sided radiculopathy.

### **SUMMARY**

We reform the hearing officer's Conclusion of Law No. 3 and the Decision section of the hearing officer's decision and order as follows:

We reform all references to T1-2 HNP to read T11-12 HNP.

We reform all references to "C3-4, C4-5, C5-6, and C6-7 aggravation of the degenerative disc disease and disc bulges" to read "aggravation of the degenerative disc disease and disc bulges at C3-4, C4-5, C5-6, and C6-7," to conform with the issue as amended by the parties.

We affirm the hearing officer's determination that the compensable injury of [date of injury], extends to T11-12 HNP, as reformed, aggravation of the degenerative disc disease and disc bulges at C3-4, C4-5, C5-6, and C6-7, as reformed, clinical instability at C5-6 and C6-7, and aggravation of cervical spondylosis.

We affirm the hearing officer's determination that the compensable injury of [date of injury], does not extend to bilateral CTS.

We reverse the hearing officer's determination that the compensable injury of [date of injury], extends to C5 and C6 right sided radiculopathy and we render a new decision that the compensable injury of [date of injury], does not extend to C5 and C6 right sided radiculopathy.

We reverse the hearing officer's determination as being incomplete and we render a new decision that the compensable injury of [date of injury], does not extend to C5 and C6 left sided radiculopathy.

The true corporate name of the insurance carrier is **SERVICE LLOYD'S INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLY-GRAY, PRESIDENT  
6907 CAPITOL OF TEXAS HIGHWAY NORTH  
AUSTIN, TEXAS 78755.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge