

APPEAL NO. 140034
FILED MARCH 3, 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 was held on November 20, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the sole disputed issue by deciding that the compensable injury of [date of injury], extends to L4-5 disc osteophytes with stenosis, L4-5 disc bulge with a small left paracentral disc protrusion, L5-S1 retrolisthesis with associated disc herniation and stenosis, and aggravation of lumbar degenerative disc disease. The appellant (carrier) appealed the hearing officer's determination, contending that the hearing officer applied an erroneous standard of causation, and that the hearing officer's decision is based on an analysis of causation that was premised on an inaccurate and incomplete understanding of the material facts. The carrier further argued that the hearing officer's determination is not supported by the evidence. The respondent (claimant) responded, urging affirmance of the hearing officer's determination.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury]. The claimant testified she was injured while helping a heavy patient out of a recliner. The claimant further testified that the patient lost his balance and jerked the claimant towards him and then back up, causing the claimant to feel immediate pain.

**L4-5 DISC OSTEOPHYTES WITH STENOSIS AND L5-S1 RETROLISTHESIS
WITH ASSOCIATED DISC HERNIATION AND STENOSIS**

The hearing officer's determination that the compensable injury of [date of injury], extends to L4-5 disc osteophytes with stenosis and L5-S1 retrolisthesis with associated disc herniation and stenosis is supported by sufficient evidence and is affirmed.

**L4-5 DISC BULGE WITH A SMALL LEFT PARACENTRAL DISC
PROTRUSION AND AGGRAVATION OF LUMBAR DEGENERATIVE DISC DISEASE**

The hearing officer also determined that the compensable injury of [date of injury], extends to L4-5 disc bulge with a small left paracentral disc protrusion and aggravation of lumbar degenerative disc disease.

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 (APD) 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*.

In APD 110054, decided March 21, 2011, the Appeals Panel stated that “[a]lthough the claimed conditions are listed in the record, there is not any explanation of causation for the claimed conditions in the record. We hold that in this case 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.”

Under the facts of this case, an L4-5 disc bulge with a small left paracentral disc protrusion and aggravation of lumbar degenerative disc disease are conditions that are a matter beyond common knowledge or experience and thus require expert medical evidence.

The claimant relied on a causation letter from [Dr. B], dated May 22, 2013, to support her claim that the compensable injury extended to the disputed conditions. Although Dr. B’s letter provided an explanation of how the mechanism of injury caused the affirmed extent-of-injury conditions, Dr. B’s letter did not discuss an L4-5 disc bulge with a small left paracentral disc protrusion or an aggravation of lumbar degenerative disc disease. The record does not contain any medical report providing the necessary causation explanation regarding an L4-5 disc bulge with a small left paracentral disc protrusion. Although the record contains a medical record dated October 17, 2012, from [Dr. G], containing an impression of “[l]umbar disc disease with chronic pain,” Dr. G does not provide an explanation of how the mechanism of injury caused an aggravation of lumbar degenerative disc disease.

Because there is no explanation of how the compensable injury caused an L4-5 disc bulge with a small left paracentral disc protrusion or aggravation of lumbar degenerative disc disease, including Dr. G’s report dated October 17, 2012, the hearing officer’s determination that the compensable injury of [date of injury], extends to those conditions is not supported by the evidence. We therefore reverse that portion of the hearing officer’s determination that the compensable injury of [date of injury], extends to an L4-5 disc bulge with a small left paracentral disc protrusion and aggravation of lumbar degenerative disc disease, and we render a new decision that the compensable

injury of [date of injury], does not extend to an L4-5 disc bulge with a small left paracentral disc protrusion and aggravation of lumbar degenerative disc disease.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [date of injury], extends to L4-5 disc osteophytes with stenosis and L5-S1 retrolisthesis with associated disc herniation and stenosis.

We reverse the hearing officer's determination that the compensable injury of [date of injury], extends to an L4-5 disc bulge with a small left paracentral disc protrusion and aggravation of lumbar degenerative disc disease, and we render a new decision that the compensable injury of [date of injury], does not extend to an L4-5 disc bulge with a small left paracentral disc protrusion and aggravation of lumbar degenerative disc disease.

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

TESS FRAZIER, PRESIDENT/CEO/CFO
8310-1 NORTH CAPITAL OF TEXAS HIGHWAY, BUILDING 1, SUITE 250
AUSTIN, TEXAS 78731.

Carisa Space-Beam
Appeals Judge

CONCUR:

Tracey T. Guerra
Appeals Judge

Margaret L. Turner
Appeals Judge