

APPEAL NO. 140053
FILED MARCH 10, 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 December 4, 2013, in [City], Texas, with [hearing officer] presiding as the hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [date of injury], extends to the diagnosis of right wrist scapholunate ligament tear; and (2) the respondent (claimant) had disability beginning on December 7, 2012, and continuing through the date of the hearing. The appellant (carrier) appeals the hearing officer's determinations on the extent of the injury and disability, contending that there was insufficient evidence to establish causation of a right wrist scapholunate ligament tear and that any disability stems from the scapholunate ligament tear and not the right wrist strain stipulated to by the parties. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered in part and reversed and remanded in part.

The parties stipulated that on [date of injury], the claimant sustained a compensable injury of right wrist strain, and that [Dr. B] was the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) on the issues of extent of the compensable injury, disability, and ability to return to work. The claimant testified that on the date of injury she was stocking bags of tortillas that were not wrapped correctly on the pallet. She was holding her right arm against the pallet to stabilize it while cutting the shrink wrap with her left hand when several bags of tortillas weighing five pounds each fell and landed on her right wrist. The claimant further testified that her right wrist and hand swelled.

RIGHT WRIST SCAPHOLUNATE LIGAMENT TEAR

The hearing officer determined that the compensable injury of [date of injury], extends to the diagnosis of right wrist scapholunate ligament tear.

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*. A right wrist scapholunate ligament tear is outside the scope of common knowledge and experience and requires expert medical evidence to establish causation.

On November 1, 2012, [Dr. O], a surgeon the claimant was referred to by her treating doctor, diagnoses the claimant with “. . . possible partial tear of scapholunate ligament, right wrist, although the MRI was normal. . . .” Later, on December 6, 2012, and May 13, 2013, Dr. O diagnoses the claimant with “[m]ost likely [the claimant] has tear of scapholunate ligament although the MRI was normal.” Dr. O did not definitively diagnose the claimant with a right wrist scapholunate ligament tear and did not discuss how the mechanism of injury caused the condition in dispute.

Dr. B, the designated doctor appointed on the issue of extent of injury, opined in his narrative report dated September 14, 2013, that “[the claimant’s] extent of injury DOES include: . . . Right Schaphoid lunate ligament tear. I have reviewed [Dr. O’s] findings and I would agree that the [claimant] does have a Schaphoid lunate ligament tear.” Dr. B. notes “the presence of ongoing pathology” and that the claimant “would certainly have healed long ago if the condition was truly limited to a sprain/strain.” However, Dr. B does not discuss how the mechanism of injury caused the condition in dispute.

[Dr. K], the doctor who conducted the post-designated doctor required medical examination, opined in his report of August 20, 2013, that the claimant has a “probable scapholunate ligament tear,” notes that the mechanism of injury and her clinical presentation are consistent with a scapholunate ligament tear, and states that he is requesting copies of x-rays mentioned in Dr. O’s reports so that he can substantiate the findings described by Dr. O. There is nothing in evidence regarding whether or not Dr. K was able to review the x-rays, nor is there an opinion by Dr. K regarding the definite existence of a right wrist scapholunate ligament tear.

There is nothing in evidence, including the reports of Dr. O, Dr. B, and Dr. K, that provides an explanation of how the [date of injury], mechanism of injury caused a right wrist scapholunate ligament tear. Accordingly, we reverse the hearing officer’s determination that the compensable injury of [date of injury], extends to the diagnosis of right wrist scapholunate ligament tear, and render a new decision that the compensable injury of [date of injury], does not extend to the diagnosis of right wrist scapholunate ligament tear.

DISABILITY

In the Background Information section of the decision the hearing officer states that “[b]ased on the determination that the claimant has an unrepaired scapholunate ligament tear in her right wrist, the claimant continues to have disability.” The hearing officer clearly based his disability determination on his determination that the compensable injury extends to the diagnosis of right wrist scapholunate ligament tear. Because we have reversed the hearing officer’s extent-of-injury determination, we also reverse the hearing officer’s determination that the claimant had disability beginning on December 7, 2012, and continuing through the date of the hearing. We note that the parties stipulated that the compensable injury includes a right wrist strain. We remand the issue of disability to the hearing officer for a determination consistent with this decision, the stipulations, and the evidence.

SUMMARY

We reverse the hearing officer’s determination that the compensable injury of [date of injury], extends to the diagnosis of right wrist scapholunate ligament tear, and render a new decision that that the compensable injury of [date of injury], does not extend to the diagnosis of right wrist scapholunate ligament tear.

We reverse the hearing officer’s determination that the claimant had disability beginning on December 7, 2012, and continuing through the date of the hearing, and remand the issue of whether the claimant had disability beginning on December 7, 2012, and continuing through the date of the hearing to the hearing officer. There is to be no new evidence presented by the parties. The hearing officer is to determine disability during the period at issue for the stipulated compensable injury of a right wrist strain.

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 **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Tracey T. Guerra
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge