

APPEAL NO. 140246  
FILED MARCH 31, 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 December 18, 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 lumbar disc bulges at L4-5 and L5-S1 and lumbar radiculopathy; (2) the respondent (claimant) has not reached maximum medical improvement (MMI); (3) because the claimant has not reached MMI, an impairment rating (IR) is premature; and (4) the claimant had disability resulting from the compensable injury of [date of injury], beginning on November 14, 2012, and continuing through the date of the CCH. The appellant (carrier) appeals the hearing officer's determinations of the extent of the compensable injury, MMI, IR, and disability. The carrier contends that the claimant failed to provide the necessary evidence to prove causation of the disputed extent-of-injury conditions. Further, the carrier argues that the claimant did not want to proceed with any injections and reached MMI on November 13, 2012, as certified by the designated doctor for the compensable lumbar sprain/strain injury. The carrier argues that the claimant's correct IR is five percent and that there is no reason why the claimant would have disability for an extended period of time for a lumbar sprain injury.

### DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the carrier accepted liability for a lumbar sprain/strain and that [Dr. H] was appointed by the Texas Department of Insurance, Division of Workers' Compensation as the designated doctor to determine MMI and IR. The claimant testified he injured his back while lifting a heavy box with a co-worker. The claimant testified he was lifting the box above his head and was twisted in an odd manner.

### DISABILITY

The hearing officer's determination that the claimant had disability resulting from the compensable injury of [date of injury], beginning on November 14, 2012, and continuing through the date of the CCH is supported by sufficient evidence and is affirmed.

## EXTENT OF INJURY

That portion of the hearing officer's determination that the compensable injury of [date of injury], extends to lumbar disc bulges at L4-5 and L5-S1 is supported by sufficient evidence and is affirmed.

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*.

In a medical report dated May 22, 2013, [Dr. B] noted he first examined the claimant on August 17, 2012. Dr. B noted that tests indicated muscular injuries, disc lesions, nerve irritation, disc injury, and nerve root injuries. Dr. B listed the claimant's diagnoses on the date of the August 17, 2012, exam as lumbosacral radiculitis, spasm of muscle, myofascitis, and strain of lumbar region. Dr. B noted the claimant subsequently had a lumbar spine MRI that revealed a 5 mm disc bulge at L4-5 and a 4 mm disc bulge at L5-S1. Dr. B noted that lifting the box while twisting to the right, the lumbar spine discs were under excessive load. Dr. B noted that the most common mechanism of injury for disc bulge is excessive axial load with rotation, which is what happened on the date of injury. Dr. B went on to note that the claimant had a prior back injury but that aggravation/worsening occurred because the lifting and twisting motion caused shearing of the lumbar spine discs and musculature. Dr. B included a detailed description of the discs. Dr. B commented that when a muscle or body part is previously injured, that area is susceptible to future injury because the tissues are in a weakened state. Dr. B recommended that the claimant have injections to his lumbar spine as well as an EMG/NCV. 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 specifically discuss lumbar radiculopathy. The record does not contain any medical report providing the necessary causation explanation regarding lumbar radiculopathy.

Because there is no explanation of how the compensable injury caused lumbar radiculopathy, the hearing officer's determination that the compensable injury of [date of injury], extends to lumbar radiculopathy 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 lumbar radiculopathy, and we render a new decision that the compensable injury of [date of injury], does not extend to lumbar radiculopathy.

### **MMI/IR**

The hearing officer's determinations that the claimant has not reached MMI and because the claimant has not reached MMI, an IR is premature are supported by the evidence and are affirmed.

### **SUMMARY**

We affirm the hearing officer's determination that the claimant had disability resulting from the compensable injury of [date of injury], beginning on November 14, 2012, and continuing through the date of the CCH.

We affirm that portion of the hearing officer's determination that the compensable injury of [date of injury], extends to lumbar disc bulges at L4-5 and L5-S1.

We affirm the hearing officer's determination that the claimant has not reached MMI.

We affirm the hearing officer's determination that because the claimant has not reached MMI, an IR is premature.

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

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.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Tracey T. Guerra  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge