

APPEAL NO. 140266
FILED APRIL 7, 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 January 6, 2014, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the sole disputed issue by deciding that the compensable injury extends to herniated/protruding discs in the lumbar spine at levels L4-5, L5-S1, L2-3, L3-4, lumbar spine stenosis, lumbar spine radiculopathy, and lumbar spine claudication.

The appellant (carrier) appealed the hearing officer's determination, contending that the hearing officer's extent-of-injury determination was so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. The respondent (claimant) responded, urging affirmance of the hearing officer's determination.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified he injured his low back on [date of injury], when he was stretched out in an awkward position for several hours while using a torch to cut sections out of a large metal plate.

The hearing officer's determination that the compensable injury extends to herniated/protruding discs in the lumbar spine at levels L4-5, L5-S1, and L3-4, lumbar spine stenosis, and lumbar spine claudication is supported by sufficient evidence and is affirmed.

The hearing officer also determined that the compensable injury extends to a herniated/protruding disc in the lumbar spine at level L2-3 and lumbar spine 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 (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, a herniated/protruding disc in the lumbar spine at level L2-3 and lumbar spine radiculopathy are conditions that are a matter beyond common knowledge or experience and require expert medical evidence.

The first mention of lumbar radiculopathy appears in a record dated May 3, 2012, from [Dr. N]. Although Dr. N listed an impression of left L5 radiculopathy, he did not explain how the compensable injury caused lumbar spine radiculopathy.

The other record that assessed the claimant with lumbar radiculopathy is an office note from [Dr. J] dated October 1, 2012. In that same record, Dr. J also assessed the claimant with “L2-S1 [herniated nucleus pulposes (HNPs)]. . . .” Dr. J did not explain in this record how the compensable injury caused lumbar spine radiculopathy or L2-S1 HNPs.

Also in evidence is a letter from Dr. J dated August 23, 2013, titled “Letter of Causation/Letter of Clarification.” Dr. J listed diagnoses of lumbar intervertebral disc without myelopathy, lumbar radiculitis, lumbar spinal stenosis/clauidication, and lumbar sprain/strain. Although Dr. J’s letter discusses most of the claimed extent-of-injury conditions and how the compensable injury caused those conditions, Dr. J’s letter does not mention a herniated/protruding disc at L2-3 or lumbar spine radiculopathy.

In this case, none of the medical records, including those of Dr. N and Dr. J, causally link a herniated/protruding disc in the lumbar spine at level L2-3 and lumbar spine radiculopathy to the compensable injury. Accordingly, we reverse the hearing officer’s determination that the compensable injury extends to a herniated/protruding disc in the lumbar spine at level L2-3 and lumbar spine radiculopathy, and we render a new decision that the compensable injury does not extend to a herniated/protruding disc in the lumbar spine at level L2-3 and lumbar spine radiculopathy.

SUMMARY

We affirm the hearing officer’s determination that the compensable injury extends to herniated/protruding discs in the lumbar spine at levels L4-5, L5-S1, and L3-4, lumbar spine stenosis, and lumbar spine claudication.

We reverse the hearing officer's determination that the compensable injury extends to a herniated/protruding disc in the lumbar spine at level L2-3 and lumbar spine radiculopathy, and we render a new decision that the compensable injury does not extend to a herniated/protruding disc in the lumbar spine at level L2-3 and lumbar spine radiculopathy.

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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Tracey T. Guerra
Appeals Judge

Margaret L. Turner
Appeals Judge