

APPEAL NO. 141547
FILED OCTOBER 24, 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 June 4, 2014, in Houston, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the [Date of Injury], compensable injury extends to lumbar radiculopathy, C3-4, C4-5, and C5-6 hypertrophic changes, and C3-4, C4-5, and C5-6 disc herniations; (2) the respondent (claimant) has not reached maximum medical improvement (MMI) and therefore no impairment rating (IR) has been assigned; and (3) the claimant had disability during the period at issue only beginning on March 23, 2013, and continuing through October 10, 2013, but the claimant did not have disability from October 11, 2013, and continuing through April 19, 2014.

The appellant (carrier) appealed the hearing officer's determinations regarding the extent of the compensable injury, MMI/IR, and a portion of the disability period, contending that the hearing officer's determinations are not supported by the evidence. The appeal file does not contain a response from the claimant to the carrier's appeal. That portion of the hearing officer's determination that the claimant did not have disability from October 11, 2013, continuing through April 19, 2014, was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [Date of Injury], at least in the form of a lumbar sprain/strain and a cervical sprain/strain. The claimant testified he injured his neck and back in a motor vehicle accident that occurred on [Date of Injury].

DISABILITY

That portion of the hearing officer's determination that the claimant had disability during the period at issue only beginning on March 23, 2013, and continuing through October 10, 2013, is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

The hearing officer's determination that the [Date of Injury], compensable injury extends to lumbar radiculopathy, C3-4, C4-5, and C5-6 hypertrophic changes, and C3-4 disc herniation is supported by sufficient evidence and is affirmed.

The hearing officer also determined that the [Date of Injury], compensable injury extends to C4-5 and C5-6 disc herniations. The extent-of-injury conditions in dispute require expert evidence to establish a causal connection with the compensable injury. See *City of Laredo v. Garza*, 293 S.W.3d 625 (Tex. App.-San Antonio 2009, no pet.) citing *Guevara v. Ferrer*, 247 S.W.3d 662 (Tex. 2007). The hearing officer makes clear in the Discussion portion of the decision that she relied on letters of causation from (Dr. C) in making her determination.

There are two letters of causation from Dr. C in evidence. In the first letter, which is dated September 17, 2013, Dr. C discussed hypertrophic changes at C3-4, C4-5, and C5-6, as well as lumbar radiculopathy. Although Dr. C explained how the claimant's mechanism of injury causes pressure on the discs in the claimant's neck and lower back, Dr. C did not specifically discuss C3-4, C4-5, or C5-6 disc herniations in this letter. In the second letter, which is dated March 24, 2014, Dr. C discussed a herniated disc at C3-4 but did not mention any other cervical disc herniation. In both letters Dr. C referred to a cervical MRI taken on August 26, 2013, and how this MRI is indicative of a whiplash type injury. However, this August 26, 2013, MRI is not in evidence. There is no other record in evidence to establish causation between the mechanism of injury and C4-5 and C5-6 disc herniations, nor is there any record in evidence that diagnoses a C4-5 or C5-6 herniation. Accordingly, we reverse the hearing officer's determination that the [Date of Injury], compensable injury extends to C4-5 and C5-6 disc herniations, and we render a new decision that the [Date of Injury], compensable injury does not extend to C4-5 and C5-6 disc herniations.

MMI/IR

The hearing officer determined that the claimant has not reached MMI as certified by (Dr. G), a referral doctor, and therefore no IR has been assigned.

As discussed above, the parties stipulated that the claimant sustained a compensable injury on [Date of Injury], at least in the form of a lumbar sprain/strain and a cervical sprain/strain, and we have affirmed the hearing officer's determination that the [Date of Injury], compensable injury extends to lumbar radiculopathy, C3-4, C4-5, and C5-6 hypertrophic changes, and C3-4 disc herniation.

Dr. G examined the claimant on March 1, 2013, and noted diagnoses of cervical and lumbar sprains/strains. Dr. G also noted that the claimant exhibited left thigh atrophy, which was "worrisome for radiculopathy." Dr. G noted that the claimant had continued neck and back pain, and referred the claimant for "PM&R evaluation and pain management." The claimant testified and the medical evidence supports that the claimant has been recommended for further treatment for the compensable cervical and lumbar injury and that further material recovery can reasonably be anticipated. See

Section 401.011(30)(A); Appeals Panel Decision 121547, decided October 1, 2012. The hearing officer found in Finding of Fact No. 6 that the certification by Dr. G on March 1, 2013, that the claimant had not reached MMI is supported by the preponderance of the evidence. This finding of fact is supported by sufficient evidence. Accordingly, the hearing officer's determination that the claimant has not reached MMI and therefore no IR has been assigned is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the hearing officer's determination that the claimant had disability during the period at issue only beginning on March 23, 2013, and continuing through October 10, 2013.

We affirm the hearing officer's determination that the [Date of Injury], compensable injury extends to lumbar radiculopathy, C3-4, C4-5, and C5-6 hypertrophic changes, and C3-4 disc herniation.

We reverse the hearing officer's determination that the [Date of Injury], compensable injury extends to C4-5 and C5-6 disc herniations, and we render a new decision that the [Date of Injury], compensable injury does not extend to C4-5 and C5-6 disc herniations.

We affirm the hearing officer's determination that the claimant has not reached MMI and therefore no IR has been assigned.

The true corporate name of the insurance carrier is **AMERISURE MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CINDY GHALIBAF
5221 NORTH O CONNOR BOULEVARD, SUITE 400
IRVING, TEXAS 75039-3711.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge