

APPEAL NO. 141688
FILED OCTOBER 2, 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 26, 2014, in Weslaco, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the compensable injury of [Date of Injury], does not extend to a thoracic sprain/strain, a lumbar sprain/strain, and a right knee sprain/strain. The appellant (claimant) appealed, disputing the hearing officer's determination of the extent of the [Date of Injury], compensable injury. The claimant contends that the hearing officer applied the wrong legal standard in evaluating the sprain/strain conditions. The claimant also contends that the evidence reflects the compensable injury extends to the disputed conditions. The respondent (carrier) responded, urging affirmance of the disputed extent-of-injury determination.

DECISION

Reversed and remanded.

The parties stipulated that on [Date of Injury], the claimant sustained a compensable injury in the form of at least a right ankle sprain and a left shin contusion. The hearing officer correctly noted in the discussion portion of his decision and order that the Appeals Panel has long held that expert medical evidence is not required for sprains/strains. See Appeals Panel Decision (APD) 130160, decided March 18, 2013; APD 120383, decided April 20, 2012; APD 992946, decided February 14, 2000; and APD 952129, decided January 31, 1996

The hearing officer went on to state that the medical treatment for the right knee did not begin until approximately 46 days after the date of injury of [Date of Injury], and that the May 22, 2013, examination records indicated that both the thoracic and lumbar spine were noted to be normal, with no pain or spasms, and with normal range of motion. The hearing officer noted that there is an attenuation factor in this case and specifically stated that “[a]s such, expert medical causation evidence was necessary and, in this case, was found to be unpersuasive to establish a causal link between the claimed conditions and the compensable injury. . . .” It is clear that in this case the hearing officer was requiring that expert medical evidence of causation be provided to establish that the claimed conditions of a sprain/strain of the thoracic spine, lumbar spine, and right knee were part of the compensable injury.

As previously noted, the hearing officer specifically stated that in this case there is an attenuation factor, given the delay in the manifestation or onset of complaints to

the thoracic spine, the lumbar spine, and the right knee associated with this injury. We cannot agree that attenuation factor in and of itself would mandate expert medical evidence of causation to establish compensability of a sprain/strain. To the contrary, a delay in the onset of symptoms was merely a factor for the hearing officer to consider in determining whether the claimant had sustained his burden of proving a causation connection between the disputed extent-of-injury conditions and the compensable injury. Although the hearing officer could accept or reject in whole or in part any of the evidence before him, the hearing officer is requiring a higher standard than that required under the law, as cited in this decision, to establish causation. Accordingly, we reverse the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to a thoracic sprain/strain, a lumbar sprain/strain, and a right knee sprain/strain and remand this issue to the hearing officer for further action consistent with this decision.

On remand the hearing officer is to consider the evidence, apply the proper evidentiary standard of causation, and determine whether or not the compensable injury of [Date of Injury], extends to a thoracic sprain/strain, a lumbar sprain/strain, and a right knee sprain/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 Texas Department of Insurance, Division of Workers' Compensation, 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge