APPEAL NO. 141973
FILED NOVEMBER 3, 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 July 14, 2014, with the record closing on July 31, 2014, in Houston, Texas, with [hearing officer] presiding as hearing officer. With regard to the issues before her, the hearing officer determined that: (1) the respondent/cross-appellant's (claimant) [Date of Injury], compensable injury extends to left knee internal derangement, lumbar radiculitis, and a left hip sprain/strain; (2) the claimant's [Date of Injury], compensable injury does not extend to lumbar radiculopathy, or right hip, cervical, or thoracic sprains/strains; (3) the claimant had not reached maximum medical improvement (MMI) as of March 11, 2014; and (4) the issue of impairment rating (IR) is premature since the date of MMI has not yet been determined. We note that the hearing officer's decision contains two conclusions of law that are both numbered 4.

The appellant/cross-respondent (carrier) appealed the hearing officer's determination that the [Date of Injury], compensable injury extends to left knee internal derangement, lumbar radiculitis, and a left hip sprain/strain, as well as the hearing officer's determinations that the claimant had not reached MMI as of March 11, 2014, and the issue of IR is premature since the date of MMI has not yet been determined. The carrier contends on appeal that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be manifestly unjust. The claimant responded to the carrier's appeal, urging affirmance of those determinations. The claimant also filed a cross-appeal regarding the hearing officer's determination that the [Date of Injury], compensable injury does not extend to lumbar radiculopathy or right hip, cervical, or thoracic sprains/strains, contending that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be manifestly unjust. The carrier responded to the claimant's cross-appeal, urging affirmance of that determination.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [Date of Injury], in the form of a left femur fracture and a lumbar strain. The claimant testified that on the date of injury he was pinned between two rolls of steel weighing approximately 18,000 pounds.

EXTENT OF INJURY

The hearing officer's determination that the [Date of Injury], compensable injury does not extend to lumbar radiculopathy or right hip, cervical, or thoracic sprains/strains is supported by sufficient evidence and is affirmed.

The hearing officer's determination that the [Date of Injury], compensable injury extends to left knee internal derangement and a left hip sprain/strain is supported by sufficient evidence and is affirmed.

The hearing officer also determined that the [Date of Injury], compensable injury extends to lumbar radiculitis.

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*.

The condition of lumbar radiculitis is a condition that requires expert evidence to establish a causal connection with the compensable injury. *See* APD 132361, decided December 6, 2013.

In evidence are records from (Dr. L), the treating doctor, listing an impression of lumbar radiculitis, among other conditions. However, Dr. L did not explain how the compensable injury caused lumbar radiculitis. Also in evidence is a note dated May 6, 2013, from (Dr. C) stating that the claimant was referred for evaluation of back pain with bilateral radiculitis by Dr. L. However, Dr. C did not specifically discuss lumbar radiculitis, nor did Dr. C explain how the compensable injury caused lumbar radiculitis. The Appeals Panel has held that the mere recitation of the claimed conditions in the medical records without attendant explanation of 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. APD 110054, decided March 21, 2011.

As there are no medical records, including the records from Dr. L and Dr. C, that explain how the [Date of Injury], compensable injury caused lumbar radiculitis, that portion of the hearing officer's determination that the [Date of Injury], compensable injury extends to lumbar radiculitis is against the great weight and preponderance of the

evidence. Accordingly, we reverse that portion of the hearing officer's determination that the [Date of Injury], compensable injury extends to lumbar radiculitis, and we render a new decision that the [Date of Injury], compensable injury does not extend to lumbar radiculitis.

MMI/IR

The hearing officer determined that the claimant had not reached MMI as of March 11, 2014, as certified by (Dr. W), the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation to determine MMI and IR, and that the issue of IR is premature since the date of MMI has not yet been determined. The hearing officer's determinations are supported by sufficient evidence.

As discussed above, the parties stipulated that the claimant sustained a compensable injury on [Date of Injury], in the form of a left femur fracture and a lumbar strain.

Dr. W examined the claimant on March 11, 2014, and noted diagnoses of a left femur fracture and a lumbar strain. Dr. W stated in his report that he had previously performed a designated doctor evaluation on the claimant on July 9, 2013, and had opined that the claimant had reached MMI with eight percent whole person impairment. Dr. W noted that subsequent to the July 9, 2013, examination the claimant received removal of hardware from his left knee and additional post-operative therapy. In evidence is an operative report dated October 25, 2013, noting that the claimant underwent removal of left femur symptomatic hardware. Dr. W opined that "there is reasonable expectation that, if the [claimant] were to complete a work-hardening program, there is potential for the [claimant] to . . . be able to have further meaningful and additional lasting improvement to his compensatory diagnosis." The claimant testified and the medical evidence supports that the claimant has been recommended for further treatment for the compensable left femur fracture and lumbar strain and that further material recovery can be reasonably anticipated. *See* Section 401.011(30)(A); APD 121547, decided October 1, 2012. Accordingly, the hearing officer's determinations that the claimant had not reached MMI as of March 11, 2014, and that the issue of IR is premature since the date of MMI has not yet been determined are supported by sufficient evidence and are affirmed.

SUMMARY

We affirm the hearing officer's determination that the [Date of Injury], compensable injury does not extend to lumbar radiculopathy, or right hip, cervical, or thoracic sprains/strains.

We affirm that portion of the hearing officer's determination that the [Date of Injury], compensable injury extends to left knee internal derangement and a left hip sprain/strain.

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

We affirm the hearing officer's determination that the claimant had not reached MMI as of March 11, 2014, and that the issue of IR is premature since the date of MMI has not yet been determined.

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

CT CORPORATION
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201.

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge