

APPEAL NO. 142046  
FILED DECEMBER 4, 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 August 20, 2014, in Houston, Texas, with hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that: (1) the compensable injury of [Date of Injury], extends to a left hand contusion and weakness, left wrist sprain/strain, and right knee laceration; and (2) the compensable injury of [Date of Injury], does not extend to a neck sprain/strain.

The appellant (self-insured) appealed that portion of the hearing officer's determination regarding the extent of the compensable injury that was favorable to respondent 1 (claimant). The self-insured contended that the claimant did not present sufficient evidence to establish causation between the claimed conditions and the compensable injury. The self-insured also contended that the hearing officer erred in admitting an exhibit over its objection.

The claimant responded, urging affirmance of the hearing officer's determination. The appeal file does not contain a response from respondent 2 (subclaimant). The hearing officer's determination that the compensable injury of [Date of Injury], does not extend to a neck sprain/strain has not been 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], in the form of a dog bite to the left hand, a strain to the right knee, and a right knee abrasion, and that the claimant did not sustain a dog bite to the right hand. It was undisputed that on the date of injury the claimant was protecting school children from a stray dog when she was attacked and bitten multiple times by the dog.

## PROCEDURAL ERROR

At the CCH the claimant offered into evidence photographs taken of herself on the date of injury. The self-insured objected to the admission of the photographs on the basis of untimely exchange. The hearing officer admitted the photographs over the self-insured's objection.

To obtain reversal of a decision based upon error in the admission or exclusion of evidence, it must be shown that the evidentiary ruling was in fact error, and that the error was reasonably calculated to cause, and probably did cause the rendition of an improper decision. See Appeals Panel Decision (APD) 051705, decided September 1, 2005. Even if the admission of these documents could be considered error under the facts of this case, any error was harmless and therefore does not amount to reversible error because the hearing officer did not render a decision based on these documents. The hearing officer stated in the Discussion portion of the decision that she made her extent-of-injury determination “[b]ased on the medical records that are in evidence.”

### **EXTENT OF INJURY**

The hearing officer’s determination that the compensable injury of [Date of Injury], extends to a left hand contusion, left wrist sprain/strain, and right knee laceration is supported by sufficient evidence and is affirmed.

The hearing officer also determined that the compensable injury of [Date of Injury], extended to left hand weakness.

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. 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, left hand weakness is a condition that is a matter beyond common knowledge or experience and requires expert medical evidence.

Only one record in evidence mentions a diagnosis of left hand weakness, which is a letter dated July 15, 2013, from (Dr. B), a peer review doctor. Dr. B noted that an EMG was approved for the diagnosis of left hand weakness, among other conditions.

However, Dr. B opined in that same letter that the compensable injury does not extend to left hand weakness. There is no other medical record in evidence discussing left hand weakness, or offering an explanation as to how the compensable injury caused left hand weakness.

As the record does not contain an explanation of how the compensable injury caused left hand weakness, we reverse the hearing officer's determination that the compensable injury of [Date of Injury], extends to left hand weakness, and we render a new decision that the compensable injury of [Date of Injury], does not extend to left hand weakness.

### **SUMMARY**

We affirm the hearing officer's determination that the compensable injury of [Date of Injury], extends to a left hand contusion, left wrist sprain/strain, and right knee laceration.

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

The true corporate name of the insurance carrier is **ALIEF INDEPENDENT SCHOOL DISTRICT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**H.D. CHAMBERS, SUPERINTENDENT  
4250 COOK ROAD  
HOUSTON, TEXAS 77072.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge