

APPEAL NO. 142368
FILED DECEMBER 22, 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 September 30, 2014, in Austin, 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], extends to an injury to the cervical spine including cervical myelopathy, cervical spondylosis, cervical canal stenosis from C3-4 to C6-7, and disc herniations at C3-4, C4-5, C5-6, and C6-7.

The appellant (carrier) appeals the hearing officer's determination of extent of the compensable injury, contending that the claimant failed to present sufficient expert medical evidence of causation to prove the compensability of the claimed conditions. The respondent (claimant) responded, urging affirmance of the 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], and that the Texas Department of Insurance, Division of Workers' Compensation appointed (Dr. C) as the designated doctor for the purpose of extent of injury. The claimant testified that he was injured while he was working as a ranch hand, and a horse reared up and came down on his shoulders.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [Date of Injury], extends to cervical myelopathy and cervical spondylosis is supported by sufficient evidence and is affirmed.

The hearing officer also determined that the compensable injury extends to an injury to the cervical spine including cervical canal stenosis from C3-4 to C6-7, and disc herniations at C3-4, C4-5, C5-6, and C6-7.

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 Guevara v. Ferrer*, 247 S.W.3d 662 (Tex. 2007). To be probative, expert testimony

must be based on reasonable medical probability. *City of Laredo v. Garza*, 293 S.W.3d 625 (Tex. App.-San Antonio 2009, no pet.) citing *Insurance Company of North America v. Meyers*, 411 S.W.2d 710, 713 (Tex. 1966). 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. APD 110054, decided March 21, 2011.

The conditions of cervical canal stenosis from C3-4 to C6-7, and disc herniations at C3-4, C4-5, C5-6, and C6-7 are conditions that require expert evidence to establish a causal connection with the compensable injury. The hearing officer states in the Discussion portion of her decision that “[i]n support of [the] [c]laimant’s position were three causation narratives from his physicians, including, M.D. [Dr. S], orthopedic surgeon, , D.C. [Dr. Sc], and, M.D. [Dr. O], family practitioner. . . . The opinions of [the] [c]laimant’s doctors were persuasive, in this case.” Dr. S, in his letter dated April 9, 2014, stated that the area affected is C5-6 where the edema is the worst and the proposed surgery would be a laminectomy and fusion on C3-7. However, Dr. S does not discuss the conditions of cervical canal stenosis from C3-4 to C6-7, and disc herniations at C3-4, C4-5, C5-6, and C6-7. Additionally, in an undated letter, Dr. S described the mechanism of injury and stated that the claimant was noted to have worsening neck pain radiating down the left shoulder. He noted that the claimant’s imaging demonstrates cervical stenosis but failed to explain how it was caused or worsened by the compensable injury. The disc herniations at C3-4, C4-5, C5-6, and C6-7 were not identified or discussed by Dr. S.

Dr. Sc, in a medical narrative dated March 18, 2014, concluded that the claimant’s pain was not consistent with solely a lumbar injury, but he failed to identify or discuss the specific conditions of cervical canal stenosis from C3-4 to C6-7, and disc herniations at C3-4, C4-5, C5-6, and C6-7.

Dr. O, in a medical narrative dated February 18, 2014, stated that it was his opinion that the claimant has injuries of neuropathy and radiculopathy that are consistent with the mechanism of injury. He additionally stated that the injury was a substantial factor in bringing about the additional damage to the claimant’s diagnosis, but he fails to discuss the specific conditions of cervical canal stenosis from C3-4 to C6-7, and disc herniations at C3-4, C4-5, C5-6, and C6-7.

As there are no medical records, including the records from Dr. S, Dr. Sc, and Dr. O, that explain how the injury of [Date of Injury], caused the claimed conditions, the hearing officer’s determination is against the great weight and preponderance of the evidence. We reverse the hearing officer’s determination that the compensable injury of

[Date of Injury], extends to cervical canal stenosis from C3-4 to C6-7, and disc herniations at C3-4, C4-5, C5-6, and C6-7, and we render a new decision that the compensable injury of [Date of Injury], does not extend to cervical canal stenosis from C3-4 to C6-7, and disc herniations at C3-4, C4-5, C5-6, and C6-7.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [Date of Injury], extends to cervical myelopathy and cervical spondylosis.

We reverse the hearing officer's determination that the compensable injury of [Date of Injury], extends to cervical canal stenosis from C3-4 to C6-7, and disc herniations at C3-4, C4-5, C5-6, and C6-7, and we render a new decision that the compensable injury of [Date of Injury], does not extend to cervical canal stenosis from C3-4 to C6-7, and disc herniations at C3-4, C4-5, C5-6, and C6-7.

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

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge