

APPEAL NO. 142451
FILED JANUARY 16, 2015

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 October 13, 2014, in San Antonio, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury does not extend to the disc pathology at levels C5-6, C6-7, L3-4, L4-5, and L5-S1; (2) the appellant (claimant) reached maximum medical improvement (MMI) on September 11, 2012; (3) the claimant's impairment rating (IR) is 10%; and (4) the claimant had disability from September 11, 2012, through July 22, 2013, as a result of the compensable injury of [Date of Injury].

The claimant appealed the hearing officer's determinations regarding the extent of the compensable injury, MMI, and IR. The claimant contended the hearing officer's decision is based upon a fundamental misunderstanding of key pieces of evidence, and that the great weight of the evidence is contrary to the hearing officer's determinations. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations. The hearing officer's determination that the claimant had disability from September 11, 2012, through July 22, 2013, as a result of the compensable injury of [Date of Injury], was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury in the form of a cervical and lumbar sprain/strain on [Date of Injury]. The claimant testified he injured his neck and low back when he was rear-ended by a car.

EXTENT OF INJURY

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 hearing officer determined that the compensable injury did not extend to the disc pathology at levels C5-6, C6-7, L3-4, L4-5, and L5-S1. In her discussion of the evidence, the hearing officer noted that (Dr. G), a referral doctor, opined that although the claimant may have had some pre-existing degenerative cervical and lumbar conditions, the compensable injury caused or aggravated the disputed conditions. The hearing officer indicated that she discounted Dr. G's opinion because Dr. G believed the mechanism of injury involved a three car accident, and the hearing officer noted "there was no evidence that the [c]laimant's vehicle hit another vehicle in front of it."

In evidence are two reports from Dr. G. In the first report dated February 27, 2014, Dr. G noted that the mechanism of injury involved the "[c]ar behind [the claimant] [crashing] into his vehicle. The force of the impact caused [the claimant's] vehicle to rear a Fed-Ex truck in front of [the claimant]." However, in a second report dated July 31, 2014, Dr. G noted that the claimant "has re-explained the mechanism of injury. [The claimant] indicated that the mechanism of injury on [[Date of Injury]] was not a three car incident but a two car incident where [the claimant] was rear-ended by a car." Dr. G then explained that the two car incident did not change his opinion regarding the extent of the compensable injury.

The hearing officer discounted Dr. G's opinion regarding the extent of the compensable injury because Dr. G based his opinion on a three car incident, which was not the correct mechanism of injury. The hearing officer did not discuss Dr. G's second report noting the correct mechanism of injury of a two car incident in her decision. The hearing officer was not required to specifically discuss each individual piece of evidence admitted, and could accept or reject in whole or in part the opinions of Dr. G, or any other evidence. See APD 031086, decided May 30, 2003, and APD 92206, decided July 6, 1992; see also APD 142257, decided December 16, 2014. However, in this case the hearing officer discounted Dr. G's opinion because she believed Dr. G based his opinion in part on an incorrect mechanism of injury. Although Dr. G's initial report dated February 27, 2014, contained an incorrect description of the mechanism of injury, Dr. G's second report dated July 31, 2014, contained a correct description of the mechanism of injury. Therefore, the reason stated by the hearing officer for discounting Dr. G's opinion is inaccurate. Accordingly, we reverse the hearing officer's determination that the compensable injury does not extend to the disc pathology at levels C5-6, C6-7, L3-4, L4-5, and L5-S1, and we remand the extent-of-injury issue to the hearing officer to make a determination of whether the evidence presented is sufficient to establish that the disputed conditions were part of the compensable injury.

MMI/IR

The hearing officer determined that the claimant reached MMI on September 11, 2012, with a 10% IR from (Dr. O), a post-designated doctor required medical examination doctor. The hearing officer based her MMI/IR determination on a compensable cervical and lumbar sprain/strain. Given that we have reversed and remanded the extent-of-injury determination, we also reverse the hearing officer's determinations that the claimant reached MMI on September 11, 2012, and that the claimant's IR is 10%. We remand the issues of MMI and IR to the hearing officer to make a determination based on the evidence after she has determined whether the claimant's compensable injury extends to the disc pathology at levels C5-6, C6-7, L3-4, L4-5, and L5-S1.

SUMMARY

We reverse the hearing officer's determination that the compensable injury does not extend to the disc pathology at levels C5-6, C6-7, L3-4, L4-5, and L5-S1, and we remand the extent-of-injury issue to the hearing officer to determine whether the compensable injury extends to the disc pathology at levels C5-6, C6-7, L3-4, L4-5, and L5-S1 based on consideration of all the evidence.

We reverse the hearing officer's determinations that the claimant reached MMI on September 11, 2012, and that the claimant's IR is 10%, and we remand the issues of MMI and IR to the hearing officer to make a determination based on the evidence after she has determined whether the claimant's compensable injury extends to the disc pathology at levels C5-6, C6-7, L3-4, L4-5, and L5-S1.

REMAND INSTRUCTIONS

On remand, the hearing officer is to properly consider all of the evidence, including Dr. G's July 31, 2014, opinion regarding the extent of the compensable injury. The hearing officer is then to make determinations regarding the extent of the [Date of Injury], compensable injury, MMI, and IR that are supported by the evidence. No new evidence is to be taken on remand.

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 **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge