

APPEAL NO. 150739
FILED MAY 27, 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 (CCH) was held on March 3, 2015, with the record closing on March 13, 2015, in Fort Worth, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the [date of injury], compensable injury does not extend to right knee internal derangement, acute tear lateral meniscus, chondral defect, femoral defect, lateral femoral condyle, chronic tearing-degeneration of the lateral meniscus, chondromalacia, osteo-arthritic changes of lateral tibio-femoral compartment, and lateral patellar tilt and subluxation; (2) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) assigned by (Dr. E) on May 3, 2013, became final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (3) the appellant (claimant) reached MMI on January 24, 2013; (4) the claimant's IR is one percent; and (5) the claimant did not have disability resulting from an injury sustained on [date of injury], through the date of the CCH.

The claimant appealed the hearing officer's extent of injury, finality, MMI, IR and disability determinations based on sufficiency of the evidence. The claimant also appealed that the hearing officer's finding of fact that the exceptions contained in Section 408.123(f) do not apply to this case contending that he had a previously undiagnosed medical condition. The respondent (carrier) responded, urging affirmance of the hearing officer's determination.

DECISION

Affirmed in part and reversed and rendered in part.

FACTUAL SUMMARY

The claimant testified that he sustained a right knee injury when he stepped into a hole with his right foot causing his right knee to buckle and twist while in the course and scope of his employment as a paramedic. The parties stipulated that the claimant sustained a compensable injury on [date of injury], and the carrier has accepted a right knee sprain as the compensable injury. It is undisputed that (Dr. S) performed a partial lateral meniscectomy to the claimant's right knee on October 12, 2012.

The Texas Department of Insurance, Division of Workers' Compensation appointed Dr. E as the designated doctor on the issues of MMI, IR, extent of the compensable injury, and disability. Dr. E examined the claimant on May 3, 2013, and

certified that the claimant reached MMI on January 24, 2013, and assigned a one percent whole person for a partial meniscectomy based on Table 64, page 3/85 of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000). For purposes of determining the extent of the compensable injury, Dr. E re-examined the claimant on April 25, 2014, and opined that the claimant's compensable injury of August 19, 2012, extends, in part, to an acute tear of the lateral meniscus.

FINALITY, MMI, IR, AND DISABILITY

The hearing officer's determinations that: (1) the first certification of MMI and assigned IR certified by Dr. E on May 3, 2013, became final under Section 408.123 and Rule 130.12; (2) the claimant reached MMI on January 24, 2013; (3) the claimant's IR is one percent; and (4) the claimant did not have disability resulting from an injury sustained on[date of injury], through the date of the CCH, are supported by sufficient evidence and are affirmed.

EXTENT OF INJURY

That portion of the hearing officer's determination that the compensable injury does not extend to right knee internal derangement, chondral defect, femoral defect, lateral femoral condyle, chronic tearing-degeneration of the lateral meniscus, chondromalacia, osteo-arthritic changes of lateral tibio-femoral compartment, and lateral patellar tilt and subluxation is supported by sufficient evidence and is affirmed.

That portion of the hearing officer's determination that the compensable injury does not extend to an acute tear of the lateral meniscus is reversed.

An MRI of the right knee dated September 17, 2012, shows an impression of "subtle horizontal posterior lateral meniscus possible complete linear tear." In evidence is a letter from Dr. S dated September 25, 2012, in which he references the claimant's right knee MRI which reveals an acute tear of the lateral meniscus. Dr. S opines the claimant sustained a work-related injury to the meniscus based on a thorough history and physical examination. Dr. S explains that the claimant: twisted his right knee and reported immediately pain and swelling; admitted to pain, swelling, popping, and giving away; and failed conservative care. Dr. S recommends that the claimant undergo right knee surgery due to the right knee pain, swelling, popping, locking, giving away, and unresponsiveness to conservative care. The evidence indicates that Dr. S performed a partial excision of an acute tear of the lateral meniscus at the right knee joint on October 12, 2012.

The condition of an acute tear of the lateral meniscus is a condition that requires evidence to establish a causal connection with the compensable injury. See *City of Laredo v. Garza*, 293 S.W.3d 625 (Tex. App.-San Antonio 2009, no pet.) citing *Guevara v. Ferrer*, 247 S.W.3d 662 (Tex. 2007). However, the court in *Guevara*, also noted that while temporal proximity alone does not by itself support an inference of medical causation, “[t]his is not to say that evidence of temporal proximity, that is, closeness in time between an event and subsequently manifested physical conditions is irrelevant to the causation issue,” *Id.* at 668. The court further stated:

Evidence of an event followed closely by manifestation of or treatment for conditions [that] did not appear before the event raises suspicion that the event at issue caused the conditions. . . . But suspicion has not been and is not legally sufficient to support a finding of legal causation. . . . When evidence is so weak as to do no more than create a surmise or suspicion of the matter to be proved, the evidence is no more than a scintilla and, in legal effect, is no evidence. . . . Nevertheless, when combined with other causation evidence, evidence that conditions exhibited themselves or were diagnosed shortly after an event may be probative in determining causation.

The claimant in this case offered evidence that the acute tear of the lateral meniscus was diagnosed shortly after the date of injury and treatment was administered for the tear of lateral meniscus. The letter from Dr. S provides an explanation of how an acute tear of the lateral meniscus was caused by the mechanism of injury. Furthermore Dr. E, the designated doctor, opined that the acute tear of the lateral meniscus was part of the compensable injury based on the mechanism of injury and the MRI of the right knee which indicated an acute tear of the lateral meniscus was part of the compensable injury. We note that in *Guevara, supra*, evidence of an injury followed closely by the manifestation of or treatment for conditions that did not appear prior to the injury may be combined with other causation evidence to be probative in determining causation. We further note that there was no medical evidence that an acute tear of the lateral meniscus was caused by something other than the mechanism of injury.

In reviewing a “great weight” challenge, we must examine the entire record to determine if: (1) there is only “slight” evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See *Cain v. Bain*, 709 S.W.2d 175 (Tex. 1986).

In applying this standard to the facts of this case, the hearing officer’s determination that the compensable injury does not extend to an acute tear lateral

meniscus, is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Accordingly, we reverse the hearing officer's determination that the compensable injury does not extend to an acute tear of the lateral meniscus, and we render a new decision that the compensable injury extends to an acute tear of the lateral meniscus.

SUMMARY

We affirm the hearing officer's determination that the first certification of MMI and assigned IR certified by Dr. E on May 3, 2013, became final under Section 408.123 and Rule 130.12.

We affirm the hearing officer's determination that the claimant reached MMI on January 24, 2013.

We affirm the hearing officer's determination that the claimant's IR is one percent.

We affirm the hearing officer's determination that the claimant did not have disability resulting from an injury sustained on [date of injury], through the date of the CCH.

We affirm that portion of the hearing officer's determination that the compensable injury does not extend to right knee internal derangement, chondral defect, femoral defect, lateral femoral condyle, chronic tearing-degeneration of the lateral meniscus, chondromalacia, osteo-arthritic changes of lateral tibio-femoral compartment, and lateral patellar tilt and subluxation.

We reverse that portion of the hearing officer's determination that the compensable injury does not extend to an acute tear of the lateral meniscus, and we render a new decision that the compensable injury extends to an acute tear of the lateral meniscus.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** 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.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge