APPEAL NO. 151207
FILED AUGUST 4, 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 April 21, 2015, with the record closing on May 15, 2015, in Amarillo, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to mild hypertrophic degenerative changes to the right AC joint, full thickness partial tear, anterior distal supraspinatus tendon, partial tear of the subscapularis tendon, Grade I strain/tear of the infraspinatus muscle and mild partial tear of the long head biceps tendon within the rotator interval; (2) the appellant (claimant) reached maximum medical improvement (MMI) on September 14, 2013; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury, MMI, and IR based on sufficiency of the evidence. The respondent (carrier) responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on (date of injury). The claimant testified that a co-worker, who was helping her lower a dryer, lost his grip, causing the entire weight of the dryer to shift to the claimant, injuring her right shoulder. (Dr. C) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to opine on MMI and IR.

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 states in the Discussion portion of his decision that "[t]he existence and cause of the disputed conditions in this case are matters beyond

common knowledge and experience and require expert medical evidence establishing a causal connection to the work-related accident as a matter of reasonable medical probability."

That portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to mild hypertrophic degenerative changes to the right AC joint, full thickness partial tear, anterior distal supraspinatus tendon, partial tear of the subscapularis tendon, and mild partial tear of the long head biceps tendon within the rotator interval is supported by sufficient evidence and is affirmed.

The hearing officer found that the compensable injury of (date of injury), does not extend to Grade I strain/tear of the infraspinatus muscle. Where the subject is one where the fact finder has the ability from common knowledge to find a causal connection, expert evidence is not required to establish causation. In APD 130808, decided May 20, 2013, the Appeals Panel held that Grade II cervical sprain/strain and Grade II lumbar sprain/strain do not require expert medical evidence. *See* APD 130915, decided May 20, 2013. *See also* APD 120383, decided April 20, 2012, where the Appeals Panel rejected the contention that a cervical strain requires expert medical evidence; APD 992946, decided February 14, 2000, where the Appeals Panel declined to hold expert medical evidence was required to prove a shoulder strain; and APD 952129, decided January 31, 1996, where the Appeals Panel declined to hold expert medical evidence was required to prove a back strain.

The hearing officer is requiring expert evidence of causation with regard to the Grade I strain/tear of the infraspinatus muscle to establish causation. Although the hearing officer could accept or reject in whole or in part the claimant's testimony or other evidence, the hearing officer is requiring a higher standard than is required under the law, as cited in this decision, to establish causation. Accordingly, we reverse that portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to Grade I strain/tear of the infraspinatus muscle and we remand that portion of the extent-of-injury issue to the hearing officer to make a determination consistent with this decision.

MMI/IR

Given that we have reversed a portion of the hearing officer's extent-of-injury determination and remanded that issue to the hearing officer to make a determination consistent with this decision, we reverse the hearing officer's determinations that the claimant reached MMI on September 14, 2013, and that the claimant's IR is zero percent, and we remand the issues of MMI/IR to the hearing officer to make a determination consistent with this decision.

SUMMARY

We affirm that portion of the hearing officer's extent-of-injury determination that the compensable injury of (date of injury), does not extend to mild hypertrophic degenerative changes to the right AC joint, full thickness partial tear, anterior distal supraspinatus tendon, partial tear of the subscapularis tendon, and mild partial tear of the long head biceps tendon within the rotator interval.

We reverse the hearing officer's determination that the compensable injury of (date of injury), does not extend to Grade I strain/tear of the infraspinatus muscle and we remand that portion of the extent-of-injury issue to the hearing officer to make a determination consistent with this decision.

We reverse the hearing officer's determinations that the claimant reached MMI on September 14, 2013, and the claimant's IR is zero percent, and we remand the issues of MMI/IR to the hearing officer to make a determination consistent with this decision.

REMAND INSTRUCTIONS

On remand the hearing officer should analyze the evidence in the record using the correct standard to determine whether or not the claimant met her burden of proof to establish causation for the conditions of Grade I strain/tear of the infraspinatus muscle.

Dr. C is the designated doctor. The hearing officer is to determine whether Dr. C is still qualified and available to be the designated doctor. If Dr. C is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to 28 TEX. ADMIN. CODE § 127.5(c) (Rule 127.5(c)) to determine MMI, which cannot be later than the statutory date of MMI (*see* Section 401.011(30)), and the IR.

The hearing officer is to inform the designated doctor whether the compensable injury includes or excludes a Grade I strain/tear of the infraspinatus muscle. The hearing officer is to inform the designated doctor that the compensable injury of (date of injury), does not extend to mild hypertrophic degenerative changes to the right AC joint, full thickness partial tear, anterior distal supraspinatus tendon, partial tear of the subscapularis tendon, and mild partial tear of the long head biceps tendon within the rotator interval.

The hearing officer is to ensure that the designated doctor has all the pertinent medical records to determine MMI and IR. The parties are to be provided with the hearing officer's letter to the designated doctor, the designated doctor's response, and

to be allowed an opportunity to respond. The hearing officer is to make determinations which are supported by the evidence on extent of injury, MMI, and IR consistent with this decision.

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 Division, 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 **HARTFORD UNDERWRITERS 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, TX 75201.

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret Turner
Appeals Judge