

APPEAL NO. 100752
FILED AUGUST 19, 2010

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 May 11, 2010. The issue before the hearing officer was:

- (1) Does the compensable injury of _____, extend to include: cervical spine disc herniations at C3-4, C4-5 and C5-6; cervical radiculopathy; lumbar spine disc herniation and spondylolisthesis at L5-S1 with cauda equina syndrome; bulging discs at L2-3 and L4-5; and bowel dysfunction?

The hearing officer determined that the compensable injury of _____, extends to: cervical spine disc herniations at C3-4, C4-5 and C5-6; cervical radiculopathy; lumbar spine disc herniation and spondylolisthesis at L5-S1 with cauda equina syndrome; bulging discs at L2-3 and L4-5; and bowel dysfunction.

The appellant (self-insured) appealed the hearing officer's extent-of-injury determination. Additionally, the self-insured contends that the hearing officer erred in denying its motion for continuance. Respondent 1 (claimant) responded, urging affirmance. The appeal file does not contain a response from respondent 2 (subclaimant).

DECISION

Reversed and rendered.

MOTION FOR CONTINUANCE

Section 410.155(b) and 28 TEX. ADMIN. CODE § 142.10(b)(2) (Rule 142.10(b)(2)) provide that the [Texas Department of Insurance, Division of Workers' Compensation] may grant a continuance if the hearing officer determines that good cause exists for the continuance. We review good cause determinations under an abuse-of-discretion standard. Appeals Panel Decision (APD) 002251, decided November 8, 2000. The hearing officer's determination will not be set aside unless the hearing officer acted without reference to any guiding rules or principles. See Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). Under the circumstances of this case, we cannot conclude that the hearing officer abused his discretion in denying the self-insured's motion for continuance.

EXTENT OF INJURY

It is undisputed that the claimant sustained a compensable injury on _____, when she slipped and fell injuring her neck and lower back at work. The

claimant had the burden of proof to establish that the compensable injury extends to: cervical spine disc herniations at C3-4, C4-5 and C5-6; cervical radiculopathy; lumbar spine disc herniation and spondylolisthesis at L5-S1 with cauda equina syndrome; bulging discs at L2-3 and L4-5; and bowel dysfunction. 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. See APD 100539, decided June 23, 2010; See also City of Laredo v. Garza, 293 S.W.3d 625 (Tex. App.-San Antonio 2009, no pet.).

The claimant's treating surgeon, (Dr. E) diagnosed the claimant with the disputed extent-of-injury conditions. In evidence is a letter dated April 17, 2010, from Dr. E in which he states he evaluated the claimant on September 5, 2006, which is (years) post-injury of _____. Further, Dr. E states that the claimant "stated she had no previous problem prior to her on-the-job injury of _____, and this is the only basis for my diagnosis as far as etiology or cause." Dr. E's letter dated April 17, 2010, does not establish within reasonable medical probability that the claimant's compensable injury extends to the disputed diagnoses/conditions.

Review of the record shows that there was no expert medical evidence presented to establish that the claimant's slip and fall at work on _____, caused the disputed extent-of-injury conditions. Since no expert medical evidence based on reasonable medical probability established the diagnosed conditions of cervical spine disc herniations at C3-4, C4-5 and C5-6; cervical radiculopathy; lumbar spine disc herniation and spondylolisthesis at L5-S1 with cauda equina syndrome; bulging discs at L2-3 and L4-5; and bowel dysfunction were caused by the compensable injury of _____, we hold that the hearing officer's extent-of-injury determination that the claimed injury included the disputed conditions to be 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 of _____, extends to cervical spine disc herniations at C3-4, C4-5 and C5-6; cervical radiculopathy; lumbar spine disc herniation and spondylolisthesis at L5-S1 with cauda equina syndrome; bulging discs at L2-3 and L4-5; and bowel dysfunction and we render a new decision that the compensable injury does not extend to cervical spine disc herniations at C3-4, C4-5 and C5-6; cervical radiculopathy; lumbar spine disc herniation and spondylolisthesis at L5-S1 with cauda equina syndrome; bulging discs at L2-3 and L4-5; and bowel dysfunction.

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

**WM, SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge