APPEAL NO. 101945
FILED FEBRUARY 22, 2011

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 November 23, 2010.

The hearing officer resolved the sole disputed issue before him by determining that the compensable injury of _____, includes a C5-6 herniated nucleus pulposus (HNP). The appellant (carrier) appealed the hearing officer's extent-of-injury determination. The respondent (claimant) responded, urging affirmance.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that she slipped on a wet floor and fell backwards, landing on her back and hitting her head. The claimant testified that she had immediate pain in her neck and back.

The evidence reflects that the claimant was initially treated by (Dr. M), (Dr. K) and (Dr. GV); however, none of their medical records are in evidence. The only record in evidence from 2003 concerning the neck is an MRI of the cervical spine dated July 7, 2003, which revealed a diffuse disc bulge measuring approximately 4 millimeters (mm) at the C5-6 level.

The claimant began treating with (Dr. A) in March of 2004. In his initial report dated March 18, 2004, Dr. A referred to the claimant's prior treatment with Dr. M, Dr. K and Dr. GV, which included epidural steroid injections for the back and for the neck. In his initial examination, Dr. A documented that the range of motion in the neck is good in all planes and the neurological exam of the upper extremities and lower extremities is unremarkable. Dr. A stated that he had reviewed the July 7, 2003, MRI which revealed a central C5-6 disc herniation. Dr. A referred the claimant for a second cervical spine MRI which was performed on April 13, 2004, and which revealed a 3-3.5 mm central disc herniation at the C5-6 level. Dr. A reported that the MRI showed a significant herniation at the C5-6 level. The claimant continued to treat with Dr. A for her back and neck symptoms from March 2004 through August 2007, at which time Dr. A retired from practice.

In evidence is an EMG dated February 16, 2006, which had findings suggestive of bilateral C5-6 radiculopathy. However, also in evidence is a CT cervical scan dated June 28, 2006, which revealed no disc herniations at any level but mild degenerative disc disease at C5-6 and C6-7. Although his medical records in evidence reflected a diagnosis of C5-6 disc herniation, Dr. A never provided any expert evidence explaining

how the claimant's fall at work on _____, caused or aggravated a C5-6 disc herniation, which in 2004 was reduced in size (from July 2003 to March 2004) and in 2006 was not revealed at all at the C5-6 level by the CT cervical scan.

In May 2004, Dr. A referred the claimant to (Dr. Z), a neurosurgeon, for a consultation on the back and the neck. Dr. Z performed a lumbar fusion on the claimant in November of 2004. The only medical record in evidence from Dr. Z concerning causation evidence of the alleged C5-6 disc herniation is a report dated December 27, 2005, in which Dr. Z stated that the claimant slipped on a wet floor and fell backwards, resulting in pain to her back and back of the head. After reporting the results of the prior cervical MRIs, Dr. Z concluded that "[t]he injury to the cervical spine is related to the work related injury on [_____]." However, Dr. Z failed to explain how the fall at work caused or aggravated a C5-6 herniated disc and did not address the reduction of the size of the herniation in 2004 or the results of the 2006 CT cervical scan.

Also in evidence is a cervical MRI dated July 27, 2009, which revealed at the C5-6 level, a moderate irregular diffuse disc-osteophyte and up to moderate multilevel spondylosis most severely seen at the C5-6 level along with mild right neural foraminal narrowing.

Following the retirement of Dr. A, the claimant began treating with (Dr. P), who opined that the C5-6 herniation was a result of the claimant's work injury in (year). In a letter dated October 21, 2009, Dr. P stated that the claimant had a disc herniation with an osteophyte (a herniated disc that has calcified) at C5-6 that has been there since the time of injury. In a December 14, 2009, response to a question about causation, Dr. P stated that the HNP at C5-6 is not degenerative disc disease. In another response dated August 16, 2010, Dr. P stated "I have, in my History & Physical examination, many times explained that the disc herniation of [the claimant] is due to her injury. [The claimant], on the MRI, has very significant disc disease at the level of [C5-6] which is compressing the root as well as the spinal cord." In a subsequent response dated September 2, 2010, Dr. P stated that "[the claimant] suffered an injury that produced a disc herniation at the level of [C5-6]. Disc herniations are produced by injuries, this patient's injury was on _____, and the cause of her disc herniation was L4."

A designated doctor was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine the extent of the compensable injury of _____. The designated doctor, (Dr. R) examined the claimant on November 20, 2009. In his narrative report of November 20, 2009, Dr. R opined that the compensable injury was a HNP at L4-5 and a cervical strain superimposed on cervical spondylosis. A letter of clarification (LOC) was sent to Dr. R. In a response dated January 15, 2010, Dr. R opined that the cervical injury was only a cervical strain and the spondylosis was a pre-existing condition and not a part of the compensable injury. Another LOC, attaching the medical records of Dr. P, the 2009 MRI results, and the 2008 cervical x-rays, was sent to Dr. R, who died before he could respond. The Division inquired whether the claimant wanted a new designated doctor appointed but the claimant did not.

In evidence is a report from (Dr. G), a required medical examination doctor, who opined that the claimant did not have a C5-6 disc herniation but only cervical degenerative disc disease, an ordinary disease of life, as revealed by the 2009 MRI results.

In his Background Information section of his decision and order, the hearing officer determined that the designated doctor's report did not have presumptive weight because he did not have any medical records prior to 2008. The hearing officer further stated:

> Nonetheless, based on the fresh complaints of the [c]laimant of radiating neck pain, the early diagnostic testing results of the cervical spine, and the opinions of [the] treating physicians, the opinion of the designated doctor is overcome by a preponderance of the evidence. The record sustains the [c]laimant's burden of proof regarding the herniated disc at C5-6.

We disagree. We note there is an attenuation factor in this case. Unlike other cases finding lay testimony sufficient evidence of causation, there are no documented neck complaints immediately after the work accident of _____. *See generally* City of Laredo v. Garza, 293 S.W.3d 625 (Tex. App.—San Antonio 2009). There are no medical records in evidence of neck complaints until March of 2004. Therefore, the conclusion that the claimant's fall backwards onto her back, striking her head, would cause or aggravate a C5-6 disc herniation is a matter beyond common knowledge or experience and would require expert medical evidence. *See generally,* Guevara v. Ferrer, 247 S.W.3d 662 (Tex. 2007).

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 of _____, includes a C5-6 HNP is based on conclusory medical evidence. A medical doctor is not automatically qualified as an expert on every medical question. Bare, baseless opinions will not support a judgment even if there is no objection to their admission in evidence. *See* City of San Antonio v. Pollock, 284 S.W.3d 809, 816 (Tex. 2009); Black v. Food Lion, Inc., 171 F.3d 308 (5th Cir. 1999). We hold that the hearing officer's extent-of-injury determination 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 decision that the compensable injury of _____, includes a C5-6 HNP and render a new decision that the compensable injury of _____, does not include a C5-6 HNP.

The true corporate name of the insurance carrier is **VIRGINIA SURETY COMPANY, INCORPORATED** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Cynthia A. Brown
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Carisa Space-Beam
Appeals Judge