APPEAL NO. 120383
FILED APRIL 20, 2012

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 January 30, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the disputed issues, the hearing officer determined that: (1) the compensable injury of [date of injury], does not extend to a cervical strain, a cervical disc protrusion/herniation at C5-6, a thoracolumbar strain, Syrinx with Arnold-Chiari malformation, left shoulder impingement syndrome and headaches; (2) the appellant (claimant) has not had disability from April 16, 2010, through the date of the CCH; (3) the claimant reached maximum medical improvement (MMI) on March 11, 2010; and (4) the claimant's impairment rating (IR) is zero percent.

The claimant appeals the hearing officer's extent of injury, MMI and IR determinations contending, among other things, an aggravation injury. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed in part, reversed and rendered in part, and reversed and remanded in part.

The claimant testified that on [date of injury], as she was coming down some icy stairs, she slipped, fell, twisted trying to catch herself, and landed on her back. The parties stipulated that the claimant "sustained a compensable injury." The parties also stipulated that [Dr. RB] is the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor to determine MMI, IR, disability, and extent of injury. The hearing officer, in his Background Information commented:

As to all of the conditions/diagnoses in Issue No. 1 above, [the] [c]laimant failed to provide expert medical evidence correlating the conditions/diagnoses with the mechanism of injury. To the extent [the] [c]laimant suffers from these conditions/diagnoses, they are the result of ordinary diseases of life which were not aggravated by the incident. Further, the fact that [the] [self-insured's] utilization review agent pre-authorized an outpatient left shoulder acromioplasty, distal clavicle resection and rotator cuff repair has no probative value relevant to the extent issue herein.

EXTENT OF INJURY OF CERVICAL DISC PROTRUSION/HERNIATION AT C5-6, SYRINX WITH ARNOLD-CHIARI MALFORMATION, LEFT SHOULDER IMPINGEMENT SYNDROME AND HEADACHES

That portion of the hearing officer's determination that the compensable injury does not extend to a cervical disc protrusion/herniation at C5-6, Syrinx with Arnold-Chiari malformation, left shoulder impingement syndrome and headaches is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY OF CERVICAL STRAIN AND THORACOLUMBAR STRAIN

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) 111262, decided October 18, 2011. See also *City of Laredo v. Garza, 293 S.W.3d 625 (Tex. App.-San Antonio 2009, no pet.) citing Guevara.*

The hearing officer commented that the claimant failed to provide expert medical evidence correlating the conditions/diagnosis, in this case a cervical and thoracic strain with the compensable injury. However, we note that the Appeals Panel has long held expert medical evidence is not required for strains. See APD 992946, decided February 14, 2000, where the Appeals Panel rejected the contention that a shoulder strain requires expert medical evidence. The Appeals Panel has also declined to hold expert medical evidence was required to prove a back strain. APD 952129, decided January 31, 1996.

The claimant was originally diagnosed at (CMC) on [date of injury], with a cervical and (left) upper arm strain. A subsequent doctor, [Dr. T] in a report dated January 27, 2011, diagnosed a cervical strain, thoracic strain and left shoulder strain/sprain. Dr. RB, the designated doctor for extent of injury, in a report dated August 30, 2011, diagnosed (among other conditions) a cervical strain and left shoulder impingement. In a report dated April 27, 2011, Dr. RB, was appointed for MMI and IR. Dr. RB rated a cervical and thoracic strain as well as left shoulder impingement syndrome. There is no doctor that affirmatively states the claimant does not have a cervical and/or thoracic strain.

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).

We hold the hearing officer's determination that the compensable injury does not extend to a cervical strain and a thoracolumbar (thoracic)[1] strain to be so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We reverse the hearing officer's determination that the compensable injury does not extend to a cervical strain and a thoracolumbar (thoracic) strain and render a new decision that the compensable injury extends to a cervical strain and a thoracic strain.

DISABILITY

The hearing officer's determination that the claimant has not had disability from April 16, 2010, through January 30, 2012, the date of the CCH, is supported by sufficient evidence and is affirmed.

MMI/IR

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

Rule 130.1(c)(3) provides in pertinent part that the assignment of an IR shall be based on the injured worker's condition as of the MMI date considering the medical records and the certifying examination and the doctor assigning the IR shall:

(A) identify objective clinical or laboratory findings of permanent impairment for the current compensable injury;

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[1] 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) (AMA Guides) on page 3/95 states that the thoracic region may be considered to represent the thoracolumbar region.

(B) document specific laboratory or clinical findings of an impairment;

(C) analyze specific clinical and laboratory findings of an impairment;

(D) compare the results of the analysis with the impairment criteria and provide the following:

(i) [a] description and explanation of specific clinical findings related to each impairment, including [zero percent] [IRs]; and

(ii) [a] description of how the findings relate to and compare with the criteria described in the applicable chapter of the AMA Guides. The doctor's inability to obtain required measurements must be explained.

Although the hearing officer mentions Dr. RB, the designated doctor, he bases his determinations of MMI and IR on the report of [Dr. B], the then treating doctor. In his Report of Medical Evaluation (DWC-69) dated March 11, 2010, based on an examination of that date, Dr. B certified MMI on March 11, 2010 (just 29 days after the [date of injury], date of injury) with no permanent impairment. There is no narrative or information required by Rule 130.1(c)(3), cited above, attached or associated with the DWC-69. In evidence is a progress note dated March 11, 2010, which indicates that the claimant's cervical, thoracic and shoulder strains were assessed. However, that note does not assign an IR and gives no indication that it was prepared for an assignment of an IR. The note is unsigned and indicates it was dictated by another doctor other than Dr. B, who signed the DWC-69. The hearing officer, in a finding of fact, finds that the March 11, 2010, date of MMI and zero percent IR certified by Dr. B are supported by a preponderance of the evidence. For the reasons stated above, namely that there is no accompanying narrative, and a progress note of the same date as the DWC-69 does not meet the requirements of Rule 130.1, the hearing officer's finding 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 claimant reached MMI on March 11, 2010, with a zero percent IR.

Dr. RB, the designated doctor appointed to render an opinion on MMI and IR, in a report dated April 27, 2011, certified that the claimant reached MMI on April 11, 2011, based on his examination of that date, with a zero percent IR. Dr. RB comments that surgery has been recommended for the claimant but the claimant "is not willing to have surgery at this time." In this report, Dr. RB's diagnoses are: (1) cervical and thoracolumbar strain; (2) Syrinx with Arnold-Chiari malformation; (3) disc herniation at C5-6 with central canal stenosis and retrolisthesis of C5 on C6; (4) impingement syndrome, left shoulder due to tendonitis; and (5) abdominal wall strain. Dr. RB considered those conditions in assessing his MMI date. DR. RB rated the cervical spine

as Diagnosis-Related Estimate (DRE) Cervicothoracic Category I: Complaints and Symptoms zero percent IR; thoracic spine as DRE Thoracolumbar Category I: Complaints and Symptoms zero percent IR; and rated the left shoulder based on range of motion measurements at zero percent IR. Dr. RB's report cannot be adopted because he considered conditions administratively determined not to be part of the compensable injury in rendering an opinion on MMI.

Because neither Dr. B's nor Dr. RB's reports can be adopted for the reasons stated, we remand the case to the hearing officer on the issues of MMI and IR for further action consistent with this decision.

SUMMARY

We affirm the hearing officer's determination that the compensable injury does not extend to a cervical disc protrusion/herniation at C5-6, Syrinx with Arnold-Chiari malformation, left shoulder impingement syndrome and headaches.

We affirm the hearing officer's determination that the claimant has not had disability from April 16, 2010, through January 30, 2012, the date of the CCH.

We reverse the hearing officer's determination that the compensable injury does not extend to a cervical strain and a thoracolumbar (thoracic) strain and render a new decision that the compensable injury does extend to a cervical strain and a thoracic strain.

We reverse the hearing officer's determination that the claimant reached MMI on March 11, 2010, with a zero percent IR as assessed by the treating doctor and remand the issues of MMI and IR for further action consistent with this decision.

REMAND INSTRUCTIONS

The designated doctor for MMI and IR is Dr. RB. On remand, the hearing officer is to determine if Dr. RB is still qualified and available to serve as the designated doctor. If Dr. RB is no longer qualified or available to serve as the designated doctor, another designated doctor is to be appointed pursuant to Rule 127.5(c) to give an opinion on MMI and IR for the compensable injury as of the date of MMI. The designated doctor is to rate the entire compensable injury to include at least a cervical and thoracic strain and those conditions accepted by the self-insured, in accordance with the AMA Guides, based on the claimant's condition as of the date of MMI and in accordance with Rule 130.1(c). The hearing officer is to provide the letter sent to the designated doctor and the designated doctor's response to the parties and allow the parties to respond. The

hearing officer is then to make a determination on the MMI and IR that is supported by the evidence and is 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 **(a certified self-insured)** 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.

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals