APPEAL NO. 130915
FILED MAY 20, 2013

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 March 5, 2013, in [City], 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 lumbar sprain, disc bulges from L1 through S1, S1 radiculopathy, left hip strain/sprain and contusion, left thigh strain/sprain and left ankle strain/sprain; (2) the appellant (claimant) reached maximum medical improvement (MMI) on April 5, 2012; and (3) the claimant's impairment rating (IR) is five percent. The claimant appealed all of the hearing officer's determinations. The respondent (self-insured) responded, urging affirmance.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], and that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed [Dr. S] as the designated doctor on issues of MMI, IR, extent of injury and whether disability is a direct result of the compensable injury. The claimant testified that she tripped over a chair in the break room and fell on the cement floor injuring her lower back, buttocks, leg, foot and ankle on [date of injury]. It is undisputed that the self-insured has accepted as compensable injuries: (1) left buttock contusion; (2) left proximal thigh contusion; (3) left foot contusion; (4) left ankle contusion; (5) left hip bursitis; (6) bilateral sacral ala fractures; and (7) lumbar strain.

EXTENT OF INJURY

The claimant was initially treated at a clinic on [date of injury], and the attending doctor noted that the claimant "just basically complains of severe throbbing pain nearly every where on the left side of her body where she fell." An MRI of the lumbar spine dated March 14, 2012, showed findings of disc bulges from L1 to S1. In evidence is a medical report dated April 17, 2012, from the claimant's treating doctor, [Dr. W], in which he diagnosed in part lumbar disc displacement, lumbar sprain/strain, hip and thigh sprain, ankle sprain, hip contusion, and foot contusion. An EMG report dated June 14, 2012, states there is evidence of right S1 radiculopathy. In a narrative report dated August 10, 2012 (based on an examination of July 23, 2012), Dr. S, the designated doctor, opined that the claimant's compensable injury extended to bilateral sacral ala fractures, lumbar strain, buttocks contusion, and leg/thigh contusion, however, the claimant has "underlying degenerative spine disease with varying degrees

of disc bulging and foraminal narrowing and spondylosis. They are age related. . . ." In evidence is a Letter of Causation dated January 3, 2013, from [Dr. G], a referral doctor, that states that the extent-of-injury conditions in dispute (lumbar sprain, disc bulges from L1 through S1, S1 radiculopathy, left hip strain/sprain and contusion, left thigh strain/sprain and left ankle strain/sprain) are related to the claimant's mechanism of injury of walking in the break room and her left foot getting caught on a chair causing her to trip and fall onto her left side.

The hearing officer, in analyzing whether the disputed extent-of-injury conditions are causally related to the work injury, referenced Dr. G's causation letter dated January 3, 2013, and stated in the Background Information section of his decision:

> With regard to extent of injury, [the] [c]laimant has produced a report from [Dr. G] which relates the disputed conditions to the injury. However, this report is largely conclusory and does not discuss explain how he rules out age related changes in the joints and spine versus traumatically caused changes. An EMG showed S1 radiculopathy, but this condition was not proven to be related to trauma rather than degenerative changes in reasonable medical probability. Significant signs of radiculopathy were not found on physical examination.

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. *See* APD 130723, decided May 6, 2013, where the Appeals Panel reversed the hearing officer's extent-of-injury determination because he had misread the causation letter in evidence.

In APD 120311-s, decided April 9, 2012, the hearing officer determined that the claimant's compensable injury did not include the stress fracture of the left second metatarsal as opined by her treating surgeon, because the treating surgeon did not rule out other causes of the stress fracture, such as the claimant's osteoporosis and her diabetes as required by the Texas Supreme Court in Transcon. Ins. Co. v. Crump, 330 S.W.3d 211 (Tex. 2010). In that case, the Appeals Panel reversed the hearing officer's extent-of-injury determination and stated that:

> The Supreme Court [in its Crump, *supra*, decision] recognized that differential diagnosis is "a clinical process whereby a doctor determines which of several potential diseases or injuries is causing the patient's symptoms by ruling out possible causes—by comparing the patient's symptoms to symptoms associated with known diseases, conducting physical examinations, collecting data on the patient's history and illness, and analyzing that data—until a final diagnosis for proper treatment is reached."
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> [The Appeals Panel noted] that an analysis of other possible causes of an injury or illness is a factor to consider when determining causation. *See* Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786 (1993) and E. I. du Pont de Nemours & Co., Inc. v. Robinson, 923 S.W.2d 549 (Tex. 1995). However, the Supreme Court in Crump noted that "a medical causation expert need not 'disprov[e] or discredit[] every possible cause other than the one espoused by him.'" The Supreme Court does not hold that the only method to establish expert medical causation evidence is by differential diagnosis.

In APD 120311-s, *supra*, the Appeals Panel held that the hearing officer had misinterpreted and misapplied the law under the Crump decision because he had interpreted that case as requiring a differential diagnosis from a doctor to establish causation and remanded the extent-of-injury issue to the hearing officer to apply the proper legal standard in analyzing and weighing the evidence.

In APD 130160, decided March 18, 2013, there were numerous medical records in evidence from doctors establishing that the claimant was diagnosed with a cervical sprain/strain, lumbar sprain/strain, right shoulder sprain/strain, right ankle sprain/strain, left wrist sprain/strain, and right hip sprain/strain after the compensable injury and that the hearing officer had incorrectly read the medical opinion regarding the disputed extent-of-injury conditions. The Appeals Panel reversed the hearing officer's extent-of-injury determination and rendered a new decision that the compensable injury does extend to a cervical sprain/strain, lumbar sprain/strain, right shoulder sprain/strain, right ankle sprain/strain, left wrist sprain/strain, and right hip sprain/strain. *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. *See also* APD 130808, decided May 20, 2013, where the Appeals Panel held that Grade II cervical sprain/strain and Grade II lumbar sprain/strain do not require expert medical evidence.

Under the facts of this case, there are medical reports in evidence that diagnose the disputed extent-of-injury conditions of: lumbar sprain, left hip strain/sprain and contusion, left thigh strain/sprain and left ankle strain/sprain; and disc bulges from L1 through S1, and S1 radiculopathy. As previously mentioned, the hearing officer found Dr. G's causation letter conclusory and lacked an explanation of causation for the age related changes in the joints and spine versus traumatically caused changes. The hearing officer is requiring expert evidence with regard to the lumbar sprain, left hip strain/sprain and contusion, left thigh strain/sprain and left ankle strain/sprain, and requiring a differential diagnosis as to the disc bulges from L1 through S1, and S1 radiculopathy to establish causation. Although the hearing officer could accept or reject in whole or in part the opinion of Dr. G, or any 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 the hearing officer's determination that the compensable injury of [date of injury], does not extend to lumbar sprain, disc bulges from L1 through S1, S1 radiculopathy, left hip strain/sprain and contusion, left thigh strain/sprain and left ankle strain/sprain, and we remand the extent-of-injury issue to the hearing officer to make a determination consistent with this decision.

MMI/IR

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. *See also* Section 401.011(30)(A). 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. *See also* 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)).

Dr. S, the designated doctor, examined the claimant on July 23, 2012. Dr. S's narrative report dated August 13, 2012 (based on the examination of July 23, 2012), states that the claimant reached clinical MMI on July 3, 2012, and his Report of Medical Evaluation (DWC-69), certified that the claimant reached MMI on July 23, 2012. Dr. S's DWC-69 and narrative report are internally inconsistent regarding the date the claimant reached MMI. Dr. S did not rate the accepted compensable injuries of left foot

contusion, left ankle contusion and left hip bursitis. Also, Dr. S's clinical findings on range of motion reference the right hip and right foot/ankle, rather than the left hip and left foot/ankle.

[Dr. HE], the doctor selected by the treating doctor acting in place of the treating doctor, examined the claimant on July 3, 2012, and certified that the claimant had not reached MMI, but is expected to reach MMI on or about October 3, 2012, based on conditions which have not been accepted by the self-insured or have not been administratively determined to be compensable injuries (disc displacement at L2-3 and fracture at L3).

[Dr. HO], the post-designated doctor required medical examination doctor, examined the claimant on February 20, 2013, certified that the claimant reached MMI on April 5, 2012, with a five percent IR. Dr. HO did not rate the accepted conditions of bilateral sacral ala fractures, left hip bursitis, and left foot contusion. Also, Dr. HO rated injuries that have not been accepted by the self-insured or have not been administratively determined to be compensable injuries (hip contusion and left ankle strain/sprain). In an addendum dated March 4, 2013, Dr. HO stated that the accepted compensable injuries were assessed during his examination of February 20, 2013, and that his opinion on MMI/IR remained the same. Furthermore, Dr. HO states in his addendum that the "left hip had a bruise and contusion of the thigh and the left hip." The contusion of the left hip has not been administratively determined to be a compensable injury.

Given that we have reversed 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 April 5, 2012, and the claimant's IR is five percent, and we remand the issues of MMI/IR to the hearing officer to make a determination consistent with this decision.

SUMMARY

We reverse the hearing officer's determination that the compensable injury of [date of injury], does not extend to lumbar sprain, disc bulges from L1 through S1, S1 radiculopathy, left hip strain/sprain and contusion, left thigh strain/sprain and left ankle strain/sprain, and we remand the extent-of-injury issue to the hearing officer to make a determination consistent with this decision.

We reverse the hearing officer's determination that the claimant reached MMI on April 5, 2012, and we remand the MMI issue to the hearing officer to make a determination consistent with this decision.

We reverse the hearing officer's determination that the claimant's IR is five percent, and we remand the IR issue to the hearing officer to make a determination consistent with this decision.

REMAND INSTRUCTIONS

Dr. S is the designated doctor. The hearing officer is to determine whether Dr. S is still qualified and available to be the designated doctor. If Dr. S is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to Rule 127.5(c) to determine extent of injury, 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 that the compensable injury of [date of injury], includes, as accepted by the self-insured: (1) left buttock contusion; (2) left proximal thigh contusion; (3) left foot contusion; (4) left ankle contusion; (5) left hip bursitis; (6) bilateral sacral ala fractures; and (7) lumbar strain. The hearing officer is to request an opinion from the designated doctor as to whether the compensable injury of [date of injury], extends to: (1) lumbar sprain; (2) left hip strain/sprain; (3) left hip contusion; (4) left thigh strain/sprain; (5) left ankle strain/sprain; (6) disc bulges from L1 through S1; and (7) S1 radiculopathy.

The hearing officer is to request from the designated doctor a certification of MMI/IR on the compensable injury and an alternate certification of MMI/IR on the compensable injury and the extent-of-injury condition(s). The hearing officer is to ensure that the designated doctor has all the pertinent medical records to determine extent of injury, 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 **(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.

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge