

APPEAL NO. 130950
FILED JUNE 13, 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 15, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the sole disputed issue by deciding that the compensable injury of [date of injury], extends to: cervical spine disc bulges at C2-3, C3-4, C4-5, C5-6, C6-7; C3-4 disc desiccation with a broad-based posterior right paracentral herniation along with posterior osteophyte; hard disc indenting the interior subarachnoid space; right C4 nerve root causing mild narrowing of the central canal and right neural foramen; and cervical radiculitis. The appellant (self-insured) appeals the hearing officer's determination. The respondent (claimant) responds, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that he was injured on [date of injury], when he caught his heel on the dolly he was using and fell landing on his upper back and neck area. The claimant also testified that he sought immediate treatment, and treated with [Dr. G], a chiropractor, for approximately two years. The claimant had previously treated with [Dr. C] for a 2001 injury, and then began treating with Dr. C again for the 2009 injury beginning in 2011.

CERVICAL SPINE DISC BULGES

The hearing officer's determination that the compensable injury of [date of injury], extends to cervical spine disc bulges at C2-3, C3-4, C4-5, C5-6, and C6-7 is supported by sufficient evidence and is affirmed.

REMAINING EXTENT-OF-INJURY CONDITIONS

The hearing officer also determined that the compensable injury of [date of injury], extends to C3-4 disc desiccation with a broad-based posterior right paracentral herniation along with posterior osteophyte; hard disc indenting the interior subarachnoid space; right C4 nerve root causing mild narrowing of the central canal and right neural foramen; and cervical radiculitis.

An MRI dated January 5, 2011, noted findings and impressions of disc bulges at C2-3, C3-4, C4-5, C5-6, and C6-7, and C3-4 disc desiccation with a broad-based posterior and right paracentral herniation along with posterior osteophytes (hard disc), indenting the anterior subarachnoid space, and right C4 nerve root causing mild

narrowing of the central canal and right neural foramen. A medical report dated January 19, 2011, from [Dr. M] noted the January 5, 2011, MRI, and assessed the claimant with postlaminectomy syndrome; cervical syndrome; cervical radicular syndrome; significant cervical disc bulges at C2-3, C3-4, C4-5, C5-6, and C6-7 with diffuse central canal narrowing throughout the region.

Dr. C examined the claimant on January 12, 2011, July 18, 2012, October 17, 2012, and October 31, 2012. The claimant relied on Dr. C's October 31, 2012, statement to establish causation between the compensable injury and the claimed conditions in dispute.

Dr. C notes the MRI on his January 12, 2011, report; however, in his October 31, 2012, report, Dr. C noted that an "MRI of the cervical spine was done on [January 5, 2011]. EMG was done on [February 1, 2011]. Three [epidural steroid injections] were done in 2011 by [Dr. M]. None of those are available for my review." Although Dr. C lists in his reports an impression of the disc bulges at C2-3 through C6-7, Dr. C does not discuss or even mention any of the other findings on the January 5, 2011, MRI; that is, the C3-4 disc desiccation with a broad-based posterior right paracentral herniation along with posterior osteophyte; hard disc indenting the interior subarachnoid space; and right C4 nerve root causing mild narrowing of the central canal and right neural foramen, nor does Dr. C discuss or mention cervical radiculitis.

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.

In APD 110054, decided March 21, 2011, the Appeals Panel stated that "[a]lthough the claimed conditions are listed in the record, there is not any explanation of causation for the claimed conditions in the record. We hold that in this case the mere recitation of the claimed conditions in the medical records without attendant explanation how those conditions may be related to the compensable injury does not establish those conditions are related to the compensable injury within a reasonable degree of medical probability."

The hearing officer noted in the Background Information section of the decision that the conditions in dispute require proof through qualified expert opinion evidence,

based on reasonable probability, with a sufficient explanation of the causal link between the mechanism of injury and the condition. We agree. The hearing officer then went into great detail regarding how Dr. C described the differences between the 2001 and 2009 injuries and symptoms, and stated “[o]verall [Dr. C’s] opinions were persuasive in determining the nature and extent of the 2001 and 2009 injuries as they relate to causation.” However, as previously mentioned, Dr. C does not discuss or even mention the C3-4 disc desiccation with a broad-based posterior right paracentral herniation along with posterior osteophyte; hard disc indenting the interior subarachnoid space; right C4 nerve root causing mild narrowing of the central canal and right neural foramen; and cervical radiculitis.

In this case, Dr. C did not causally link the C3-4 disc desiccation with a broad-based posterior right paracentral herniation along with posterior osteophyte; hard disc indenting the interior subarachnoid space; and right C4 nerve root causing mild narrowing of the central canal and right neural foramen or cervical radiculitis to the compensable injury. In the Background Information section of the decision the hearing officer references the claimant’s credibility, reports from the treating doctor and the peer review doctor, and medical reports prior to the compensable injury of [date of injury], in discussing the sufficiency of the claimant’s proof on causation. However, these reports did not provide the required causally related link to establish causation between the mechanism of injury and these conditions. Accordingly, we reverse the hearing officer’s determination that the compensable injury of [date of injury], extends to C3-4 disc desiccation with a broad-based posterior right paracentral herniation along with posterior osteophyte; hard disc indenting the interior subarachnoid space; right C4 nerve root causing mild narrowing of the central canal and right neural foramen; and cervical radiculitis, and we render a new decision that the compensable injury of [date of injury], does not extend to C3-4 disc desiccation with a broad-based posterior right paracentral herniation along with posterior osteophyte; hard disc indenting the interior subarachnoid space; right C4 nerve root causing mild narrowing of the central canal and right neural foramen; and cervical radiculitis.

SUMMARY

We affirm the hearing officer’s determination that the compensable injury of [date of injury], extends to cervical spine disc bulges at C2-3, C3-4, C4-5, C5-6, and C6-7.

We reverse the hearing officer’s determination that the compensable injury of [date of injury], extends to C3-4 disc desiccation with a broad-based posterior right paracentral herniation along with posterior osteophyte; hard disc indenting the interior subarachnoid space; right C4 nerve root causing mild narrowing of the central canal and right neural foramen; and cervical radiculitis, and we render a new decision that the

compensable injury of [date of injury], does not extend to C3-4 disc desiccation with a broad-based posterior right paracentral herniation along with posterior osteophyte; hard disc indenting the interior subarachnoid space; right C4 nerve root causing mild narrowing of the central canal and right neural foramen; and cervical radiculitis.

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

**[RR]
[ADDRESS]
[CITY], TEXAS [ZIP CODE].**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge