APPEAL NO. 131252
FILED JULY 3, 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 February 11, 2013, with the record closing on May 7, 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 a crush injury to the right hand, cervical sprain/strain, right shoulder contusion, and right hip contusion; (2) the appellant (claimant) reached maximum medical improvement (MMI) on March 23, 2011; and (3) the claimant's impairment rating (IR) is six percent.

The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury, MMI, and IR. The respondent (carrier) responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that: (1) on [date of injury], the claimant sustained a compensable injury that includes at least a right elbow ulnar nerve contusion, right knee sprain, lumbar sprain, right hip sprain, right hand sprain, anxiety, and depression; (2) [Dr. S] was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as the designated doctor to determine MMI and assign an IR; (3) Dr. S found that the claimant reached MMI on March 23, 2011; and (4) Dr. S assigned the claimant a six percent whole person impairment. The claimant testified that she slipped on a pipe that was left on the floor causing her to fall backwards and land on her entire right side.

EXTENT OF INJURY

That portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to a crush injury to the right hand is supported by sufficient evidence and is affirmed.

The claimant testified that she went to the emergency room on the date of injury. In evidence are x-rays taken on the date of injury of the right knee, lumbar spine, right hip, right elbow, and right hand. The claimant treated with [Dr. M] on August 31, 2009, and was diagnosed with a right hip contusion, cervical strain, and right shoulder and elbow pain possibly due to contusion and/or strain. There are numerous medical records in evidence. The hearing officer stated in the Background Information portion of his decision that "[e]xtent of the compensable injury to include the conditions in dispute

in this hearing requires proof through qualified expert opinion evidence, based on reasonable [medical] probability, along with a sufficient explanation of the causal link between the mechanism of injury and the condition in dispute."

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.

However, where the subject is one where the fact finder has the ability from common knowledge to find a causal connection, expert evidence is not required to establish causation. *See* 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 and APD 130915, decided May 20, 2013.

The hearing officer is requiring expert evidence of causation with regard to the cervical sprain/strain, right shoulder contusion, and right hip contusion to establish causation. Although the hearing officer could accept or reject in whole or in part the claimant's testimony or 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 that portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to a cervical sprain/strain, right shoulder contusion, and right hip contusion and we remand that portion of the extent-of-injury issue to the hearing officer to make a determination consistent with this decision.

MMI/IR

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 March 23, 2011, and that the claimant's IR is six percent, and we remand the

issues of MMI/IR to the hearing officer to make a determination consistent with this decision.

SUMMARY

We affirm that portion of the hearing officer's extent-of-injury determination that that the compensable injury of [date of injury], does not extend to a crush injury to the right hand.

We reverse the hearing officer's determination that the compensable injury of [date of injury], does not extend to a cervical sprain/strain, right shoulder contusion, and right hip contusion and we remand that portion of the extent-of-injury 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 March 23, 2011, and the claimant's IR is six percent, and we remand the issues of MMI/IR to the hearing officer to make a determination consistent with this decision.

REMAND INSTRUCTIONS

On remand the hearing officer should analyze the evidence in the record using the correct standard to determine whether or not the claimant met her burden of proof to establish causation for the conditions of cervical sprain/strain, right shoulder contusion, and right hip contusion.

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 28 TEX. ADMIN. CODE § 127.5(c) (Rule 127.5(c)) to determine 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: (1) right elbow ulnar nerve contusion; (2) right knee sprain; (3) lumbar sprain; (4) right hip sprain; (5) right hand sprain; (6) anxiety; and (7) depression as stipulated to by the parties. The hearing officer is to inform the designated doctor that the compensable injury of [date of injury], does not include a crush injury to the right hand.

The hearing officer is to request from the designated doctor a certification of MMI and IR on the compensable injury, including the above listed conditions, and an alternate certification of MMI/IR on the compensable injury, including the above listed conditions and the extent-of-injury conditions of cervical sprain/strain, right shoulder

contusion and right hip contusion. The hearing officer is to ensure that the designated doctor has all the pertinent medical records to determine 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 **LM INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge