APPEAL NO. 131286
FILED JULY 25, 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 (CCH) was held on April 22, 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 depression and a category II cervical sprain; (2) the appellant (claimant) reached maximum medical improvement (MMI) on January 20, 2012; and (3) the impairment rating (IR) is 13%. The claimant appealed all of the hearing officer's determinations. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant testified that she sustained an injury on [date of injury], while stacking 40 pound pallets at work. Although the parties did not stipulate at the CCH what injuries the self-insured accepted, a Request for Designated Doctor Examination (DWC-32) submitted by the self-insured on April 23, 2012, notes that the self-insured accepted a "[l]eft shoulder/rotator cuff."

EXTENT OF INJURY

The hearing officer's determination that the compensable injury does not extend to depression is supported by sufficient evidence and is affirmed.

The hearing officer also determined that the compensable injury does not extend to a category II cervical sprain. In the Background Information section of the decision, the hearing officer noted the following:

The [c]laimant did not provide information as to whether or how a common sprain differed from a category/grade II sprain and thus did not show how the disputed condition as phrased was within the common knowledge of a layperson.

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The [c]laimant presented the opinion of [Dr. G], regarding causation as to the disputed conditions. The [c]laimant's medical history reflected that the [c]laimant had previously undergone a cervical fusion sometime in 1996. [Dr. G] diagnosed the condition of category/grade II cervical sprain and noted that there was sufficient force

caused by overhead lifting that resulted in shear torque and compression forces to cause the grade II sprain of the neck.

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The [self-insured] presented the medical opinion of an orthopedic doctor, [Dr. V], who opined that unless the [c]laimant was balancing the pallets upon her head the described mechanism of injury of stacking pallets was simply not plausible for a cervical injury based upon biomechanical principals.

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The evidence presented in the [CCH] was insufficient to establish a causal connection between the disputed conditions and the compensable injury event or any treatment resulting from the injury.

The Appeals Panel has previously held that a Grade II cervical sprain/strain does not require expert medical evidence. *See* Appeals Panel Decision (APD) 130808, decided May 20, 2013, and APD 130915, decided May 30, 2013. The hearing officer is requiring expert evidence with regard to the category II cervical sprain/strain to establish causation. Although the hearing officer could accept or reject in whole or in part the opinions of Dr. G, Dr. V, or any other evidence, the hearing officer is requiring a higher standard than that 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 a category II cervical sprain and remand this issue to the hearing officer for further action consistent with this decision.

MMI/IR

The hearing officer determined that the claimant reached MMI on January 20, 2012, with a 13% IR, per the certification of [Dr. C], the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine MMI and IR. Dr. C based the 13% IR on range of motion measurements taken of the claimant's left shoulder for a 13% upper extremity (UE) impairment, and combined the 13% UE impairment with a 10% UE impairment assessed for a distal clavicle resection, which converts to a 13% whole person impairment.

The Appeals Panel has held that an extent-of-injury issue is a threshold issue that must be resolved before MMI and IR can be resolved, and that the resolution of the MMI and IR issues will flow from the resolution of the extent issue. *See* APD 110854, decided August 15, 2011. *See also* APD 130499, decided May 6, 2013. Given that we

have reversed the hearing officer's determination that the compensable injury of [date of injury], does not extend to a category II cervical sprain and have remanded that issue to the hearing officer, we must also reverse the hearing officer's determination that the claimant reached MMI on January 20, 2012, with a 13% IR, and remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [date of injury], does not extend to depression.

We reverse the hearing officer's determination that the compensable injury does not extend to a category II cervical sprain, and we remand this issue to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determinations that the claimant reached MMI on January 20, 2012, with a 13% IR, and remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the hearing officer is to consider the evidence, apply the proper evidentiary standard of causation, and determine whether or not the compensable injury of [date of injury], extends to a category II cervical sprain.

Dr. C is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. C is still qualified and available to be the designated doctor. If Dr. C is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the compensable injury. If the hearing officer determines that the [date of injury], compensable injury extends to a category II cervical sprain, the hearing officer is to advise the designated doctor that the compensable injury includes that condition and request the designated doctor to provide an opinion on the claimant's MMI and IR pursuant to 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). The hearing officer is also to advise the designated doctor that the [date of injury], compensable injury does not extend to depression. The parties are to be provided with the hearing officer's letter to the designated doctor, the designated doctor's response, and are to be allowed an opportunity to respond. If the hearing officer determines that the [date of injury], compensable injury does not extend to a category II cervical sprain, the hearing officer is to make a determination on MMI and IR considering the evidence.

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.

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge