APPEAL NO. 141478
FILED SEPTEMBER 11, 2014

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 May 27, 2014, in Houston, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the [date of injury], compensable injury does not extend to herniation at L4-5 with nerve root irritation [sciatica], sprained talofibular ligament, and fibromyalgia; (2) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on October 1, 2013; (3) the claimant's impairment rating (IR) is five percent; and (4) the claimant had disability during the period at issue only beginning on March 6, 2013, and continuing through October 1, 2013, but did not have disability from October 2, 2013, and continuing through the date of the CCH.

The claimant appealed, disputing the hearing officer's determination that the compensable injury did not extend to the disputed conditions as well as the hearing officer's determinations of MMI and IR. The claimant also appealed the hearing officer's determination that she did not have disability from October 2, 2013, and continuing through the date of the CCH. The respondent/cross-appellant (self-insured) responded, urging affirmance of the disability and extent-of-injury determinations disputed by the claimant.

The self-insured also appealed, disputing the hearing officer's determinations of MMI and IR. The self-insured argued that the claimant reached MMI on October 8, 2012, with a zero percent IR as determined by the designated doctor. The self-insured also appealed the hearing officer's determination that the claimant sustained disability from March 6, 2013, through October 1, 2013. There is no response from the claimant to the self-insured's request for review in the appeal file.

The hearing officer's determination that the claimant had disability during the period at issue only beginning on March 6, 2013 (effectively determining that the claimant did not have disability from October 9, 2012, through March 5, 2013) was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated in part that on [date of injury], the claimant sustained a compensable injury at least in the form of a lumbar sprain/strain, a left knee

sprain/strain, and a left ankle sprain/strain. The claimant testified that she was injured when she stepped on an air conditioning vent in the floor that gave way.

EXTENT OF INJURY

That portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to a herniation at L4-5 with nerve root irritation [sciatica] and fibromyalgia is supported by sufficient evidence and is affirmed.

The hearing officer determined that the [date of injury], compensable injury does not extend to a sprained talofibular ligament. In her discussion of the evidence, the hearing officer stated in part that the sprained talofibular ligament was beyond common knowledge and that an "[e]xpert medical opinion was required for a specific ligament despite the accepted ankle sprain/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) 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 120383, decided April 20, 2012, where the Appeals Panel rejected the contention that a cervical strain requires expert medical evidence, and 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 130915, decided May 20, 2013.

In the instant case, there was a medical report in evidence that diagnosed the claimant with a sprained talofibular ligament. As previously noted, the parties stipulated that the compensable injury extends to a left ankle sprain/strain. The hearing officer specifically stated in her discussion that she was requiring expert medical evidence to establish the condition of a sprained talofibular ligament. We agree that since the alleged extent-of-injury condition to the left ankle at issue is specific to a particular ligament, the condition should be diagnosed in the medical records. However, we cannot agree that just because the alleged sprain/strain is to a particular ligament that it elevates the condition of a sprain/strain to a level that is so complex that a fact finder lacks the ability from common knowledge to find a causal connection. Although the

hearing officer could accept or reject in whole or in part the opinion of medical professional in evidence, 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 for the sprained talofibular ligament. Accordingly, we reverse the hearing officer's determination that the compensable injury of [date of injury], does not extend to a sprained talofibular ligament and we remand that extent-of-injury issue to the hearing officer to make a determination consistent with this decision.

MMI/IR

Given that we have reversed and remanded a portion of the extent-of-injury determination, we also reverse the hearing officer's determination that the claimant reached MMI on October 1, 2013, with a five percent IR. We remand the MMI and IR issues to the hearing officer to make a determination based on the evidence after she has determined whether the claimant's compensable injury extends to a sprained talofibular ligament.

DISABILITY

Given that we have reversed and remanded a portion of the extent-of-injury determination, we also reverse that portion of the hearing officer's determination that the claimant had disability beginning on March 6, 2013, and continuing through October 1, 2013, but did not have disability from October 2, 2013, and continuing through the date of the CCH and remand that portion of the disability issue to the hearing officer to make a determination based on the evidence after she has determined whether the claimant's compensable injury extends to a sprained talofibular ligament. We note that the Appeals Panel has previously explained that disability and MMI are different concepts under the 1989 Act, and that while a claimant's entitlement to temporary income benefits ends when he or she reaches MMI, disability as defined by Section 401.011(16) does not necessarily end on that date. *See* APD 051030, decided June 20, 2005.

REMAND INSTRUCTIONS

On remand the hearing officer is to make a determination of whether the [date of injury], compensable injury extends to a sprained talofibular ligament utilizing the proper legal standard in weighing and analyzing the evidence.

The hearing officer is to make a determination of MMI and IR based on the evidence after she has determined whether the claimant's compensable injury extends to a sprained talofibular ligament.

The hearing officer is to make a determination of whether the claimant sustained disability from March 6, 2013, through the date of the CCH after she has determined whether the claimant's compensable injury extends to a sprained talofibular ligament.

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 Texas Department of Insurance, Division of Workers' Compensation, 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 **CITY OF HOUSTON (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

ANNA RUSSELL, CITY SECRETARY
900 BAGBY
HOUSTON, TEXAS 77002.

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge