APPEAL NO. 142257
FILED DECEMBER 16, 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 August 21, 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 a 4 mm broad-based disc bulge at L5-S1, lumbar radiculopathy at L5-S1, or Grade I spondylolisthesis (approx. 6-7 mm of anterior displacement of L5); (2) the appellant (claimant) reached maximum medical improvement (MMI) on May 2, 2013; (3) the claimant's impairment rating (IR) is five percent; and (4) the claimant had disability from May 3, 2013, through the date of the CCH. The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury, MMI and IR. The claimant contends that the hearing officer failed to properly consider the testimony and documentary evidence presented at the CCH. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

The hearing officer's determination that the claimant had disability from May 3, 2013, through the CCH was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated that on [Date of Injury], the claimant sustained a compensable injury that includes a lumbar sprain/strain and that (Dr. T) is the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor for MMI, IR, extent of injury, return to work, and direct result. The claimant testified that he injured his back while moving boxes at work.

EXTENT OF INJURY

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 a narrative report based on a date of examination of October 17, 2013, Dr. T stated in part that the 4 mm broad-based disc bulge and L5-S1 radiculopathy were caused by the injury and noted that based on the information provided and the examination findings presented his opinion provides a clearly defined answer sufficiently explaining how his determination was made within a reasonable degree of medical probability. Dr. T noted that the claimant had Grade I spondylolisthesis on x-rays and stated the mechanism of lifting and twisting has resulted in the disc bulge and resulting spondylolisthesis, which in turn resulted in the nerve root injury. In his discussion of the evidence, the hearing officer stated in part that "a designated doctor must explain how the on-the-job accident/mechanism of injury caused or aggravated the conditions in question. Because [Dr. T] did not provide a causation analysis, his extent of injury opinion cannot be adopted." The hearing officer states that a causation analysis was essential to prove that the compensable injury includes the conditions in dispute and because the claimant did not present this essential causation analysis, he failed to meet his burden of proof on extent of injury.

However, a review of the record reflects that the narrative report from Dr. T, the designated doctor appointed for the extent-of-injury issue provided some analysis for his opinion that the conditions in dispute were part of the compensable injury. In APD 130723, decided May 6, 2013, and APD 130915, decided May 20, 2013, the Appeals Panel reversed the hearing officer's extent-of-injury determination because he had misread the causation letter in evidence. Although the hearing officer in this case could accept or reject in whole or in part the opinion of Dr. T, or any other evidence, the hearing officer misread Dr. T's extent of injury opinion. Accordingly, we reverse the hearing officer's determination that the compensable injury does not extend to a 4 mm broad-based disc bulge at L5-S1, lumbar radiculopathy at L5-S1, or Grade I spondylolisthesis (approx. 6-7 mm of anterior displacement of L5) and remand the extent-of-injury issue to the hearing officer to make a determination of whether the evidence presented is sufficient to establish that the disputed conditions were part of the compensable injury.

MMI AND IR

The hearing officer determined that the claimant reached MMI on May 2, 2013, with a five percent IR from Dr. T based on a compensable lumbar sprain/strain. Given that we have reversed and remanded the extent-of-injury determination, we also reverse the hearing officer's determination that the claimant reached MMI on May 2, 2013, with a five percent. We remand the MMI and IR issues to the hearing officer to

make a determination based on the evidence after he has determined whether the claimant's compensable injury extends to a 4 mm broad-based disc bulge at L5-S1, lumbar radiculopathy at L5-S1, or Grade I spondylolisthesis (approx. 6-7 mm of anterior displacement of L5).

SUMMARY

We reverse the hearing officer's determination that the [Date of Injury], compensable injury does not extend to a 4 mm broad-based disc bulge at L5-S1, lumbar radiculopathy at L5-S1, or Grade I spondylolisthesis (approx. 6-7 mm of anterior displacement of L5) and remand the extent-of-injury issue to the hearing officer for further consideration of all the evidence.

We reverse the hearing officer's determination that the claimant reached MMI on May 2, 2013, and remand the MMI issue to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the claimant's IR is five percent and remand the IR issue to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand, the hearing officer is to properly consider all of the evidence, including Dr. T's opinion regarding the extent of the compensable injury. The hearing officer is then to make determinations regarding the extent of the [Date of Injury], compensable injury, MMI, and IR that are supported by 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 **XL SPECIALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge