APPEAL NO. 171082
FILED JULY 12, 2017

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 11, 2017, 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), extends to intersection syndrome of the left forearm, crossover syndrome of the left wrist and forearm, crush injury to the left wrist, forearm and elbow, dorsal and ulnar extensor tenosynovitis, short and long extensor tendon synovitis, open long extensor and tenolysis and tenosynovectomy (four tendons), short thumb extensor tenolysis and tenosynovectomy (two tendons), tenosynovial/muscle fascia release of short and long-extensor intersection, multicompartment dorsal forearm fasciotomy, and subcutaneous adhesiolysis; (2) the respondent (claimant) reached maximum medical improvement (MMI) on January 14, 2015; and (3) the impairment rating (IR) is seven percent.

The appellant (carrier) appeals the hearing officer's determination as being legally in error and contrary to the preponderance of the evidence.

The claimant responded, urging affirmance.

DECISION

Reversed and rendered in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury); that the carrier has accepted as compensable a left forearm contusion; and that (Dr. L) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as the designated doctor to determine extent of injury.

The claimant, an international flight attendant, testified that he injured his left wrist, arm and shoulder on (date of injury), when he placed his arm through a tight space on the side of an airline seat in an attempt to retrieve a passenger's purse and shoes so that the seat could be placed in an upright position.

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*. Additionally, the claimant must show the mechanism of injury is a producing cause of the claimed injury, i.e., a substantial factor in bringing about an injury, and without which the injury would not have occurred. *See Transcontinental Insurance Company v. Crump*, 330 S.W.3d 211 (Tex. 2010).

The hearing officer determined that the compensable injury extends to the disputed conditions. In her discussion of the evidence, the hearing officer noted that, in his report, Dr. L persuasively reasoned that the mechanism of injury was sufficient to cause the conditions in dispute.

Dr. L examined the claimant for the purpose of addressing extent of the compensable injury on October 17, 2016. In his report of such examination dated November 28, 2016, Dr. L, in the History of Injury section, described the mechanism of injury as "the chair closed on [the claimant's] arm and broke it." Additionally, Dr. L provided the following causation analysis:

> RATIONALE: The examinee indicated that he was attempting to close electronic seats on an airplane. He indicated that the chair closed on his arm and broke it. This mechanism of injury along with subsequent swelling and inflammation would be consistent with causing the [disputed conditions].

Dr. L's report, including his causation analysis and opinion that the compensable injury extends to the disputed conditions, is based upon an inaccurate understanding of the mechanism of injury. The claimant testified that he was injured when he repeatedly placed his arm through a tight space in the side of the airline seat. The claimant did not testify, and there is no other evidence in the record, that the chair closed on the claimant's arm and broke it. No other records in evidence provide expert evidence to establish that the mechanism of the injury was a producing cause of the disputed conditions. Therefore, the preponderance of the other medical evidence is contrary to the designated doctor's opinion that the compensable injury extends to the disputed conditions.

In reviewing a "great weight" challenge, we must examine the entire record to determine if: (1) there is only "slight" evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. *See Cain v. Bain*, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's determination that the claimant's compensable injury of (date of injury), extends to the disputed conditions is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We therefore reverse the hearing officer's determination that the claimant's compensable injury of (date of injury), extends to intersection syndrome of the left forearm, crossover syndrome of the left wrist and forearm, crush injury to the left wrist, forearm and elbow, dorsal and ulnar extensor tenosynovitis, short and long extensor tendon synovitis, open long extensor and tenolysis and tenosynovectomy (four tendons), short thumb extensor tenolysis and tenosynovectomy (two tendons), tenosynovial/muscle fascia release of short and long-extensor intersection, multicompartment dorsal forearm fasciotomy, and subcutaneous adhesiolysis and we render a new decision that the claimant's compensable injury of (date of injury), does not extend to intersection syndrome of the left forearm, crossover syndrome of the left wrist and forearm, crush injury to the left wrist, forearm and elbow, dorsal and ulnar extensor tenosynovitis, short and long extensor tendon synovitis, open long extensor and tenolysis and tenosynovectomy (four tendons), short thumb extensor tenolysis and tenosynovectomy (two tendons), tenosynovial/muscle fascia release of short and long-extensor intersection, multicompartment dorsal forearm fasciotomy, and subcutaneous adhesiolysis.

MMI/IR

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

Dr. L, the designated doctor, examined the claimant for the purpose of addressing MMI/IR on July 8, 2015. In a Report of Medical Evaluation (DWC-69) and accompanying narrative dated July 29, 2015, Dr. L certified that, with regard to the accepted left forearm contusion, the claimant attained MMI on November 12, 2014, with

a zero percent IR. Pursuant to a Presiding Officer's Directive to Order Designated Doctor Exam dated January 5, 2017, Dr. L again examined the claimant on March 14, 2017, for the purpose of addressing MMI/IR for the accepted and disputed conditions. In his DWC-69 and narrative report dated March 22, 2017, Dr. L certified that the claimant reached MMI on November 12, 2014, and assigned an IR of zero percent for both the accepted and disputed conditions.

The hearing officer, noting that Dr. L did not consider the disputed conditions in rendering his certification of MMI/IR (which the hearing officer mistakenly indicates is dated July 8, 2016), found the same to be contrary to the preponderance of the evidence. The hearing officer made no mention in her decision of Dr. L's March 22, 2017, certification of MMI/IR and, instead, adopted the MMI/IR certification of (Dr. W), a referral of the treating doctor, who considered at least some of the disputed conditions, including intersection syndrome of the left forearm and crossover syndrome, and who certified that the claimant reached MMI on January 14, 2015, with an IR of seven percent. Given that we have reversed the hearing officer's extent-of-injury determination, we also reverse the hearing officer's determination that the claimant reached MMI on January 14, 2015, with a seven percent IR as certified by Dr. W because her certification considered and rated conditions determined not to be part of the compensable injury.

There are two certifications of MMI/IR in evidence which rate the compensable left forearm contusion. As stated above, Dr. L, the designated doctor, certified that the claimant reached MMI on November 12, 2014, with an IR of zero percent. (Dr. D), the carrier's choice of physician, certified that the claimant reached MMI on February 4, 2014, with an IR of zero percent. Because there are two certifications of MMI/IR in the evidence that may be adopted, we do not deem it appropriate to render a decision concerning the date of MMI and correct IR. Accordingly, we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

SUMMARY

We reverse the hearing officer's determination that the compensable injury of (date of injury), extends to intersection syndrome of the left forearm, crossover syndrome of the left wrist and forearm, crush injury to the left wrist, forearm and elbow, dorsal and ulnar extensor tenosynovitis, short and long extensor tendon synovitis, open long extensor and tenolysis and tenosynovectomy (four tendons), short thumb extensor tenolysis and tenosynovectomy (two tendons), tenosynovial/muscle fascia release of short and long-extensor intersection, multicompartment dorsal forearm fasciotomy, and subcutaneous adhesiolysis and render a new decision that the compensable injury of (date of injury), does not extend to intersection syndrome of the left forearm, crossover

syndrome of the left wrist and forearm, crush injury to the left wrist, forearm and elbow, dorsal and ulnar extensor tenosynovitis, short and long extensor tendon synovitis, open long extensor and tenolysis and tenosynovectomy (four tendons), short thumb extensor tenolysis and tenosynovectomy (two tendons), tenosynovial/muscle fascia release of short and long-extensor intersection, multicompartment dorsal forearm fasciotomy, and subcutaneous adhesiolysis.

We reverse the hearing officer's determination that the claimant reached MMI on January 14, 2015, and remand the issue of MMI to the hearing officer for further action consistent with this decision.

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

REMAND INSTRUCTIONS

On remand the hearing officer is to make findings of fact, conclusions of law and render a decision regarding the issues of MMI and IR that is consistent with the evidence and 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 **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** 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.

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge