APPEAL NO. 182768
FILED FEBRUARY 13, 2019

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 November 14, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to a wedge compression fracture at T11, a wedge compression fracture at T12, an endplate compression fracture at T11, and an endplate compression fracture at T12; (2) the compensable injury of (date of injury), does not extend to a wedge compression fracture at L1, dehydration and compression of T10-11, dehydration and compression of T11-12, dehydration and compression of T12-L1, vertical schmorl's nodes at T11, or vertical schmorl's nodes at T12; (3) the respondent/cross-appellant (claimant) reached maximum medical improvement (MMI) on February 28, 2018; and (4) the claimant's impairment rating (IR) is 10%.

The appellant/cross-respondent (carrier) appealed the ALJ's determination that the compensable injury extends to wedge compression fractures at T11 and T12 and endplate compression fractures at T11 and T12, as well as the ALJ's determinations of MMI and IR. Additionally, the carrier notes that the ALJ misnumbered the conclusions of law. The claimant responded, urging affirmance of the extent-of-injury determination appealed by the carrier.

The claimant cross-appealed, disputing the ALJ's determination that the compensable injury does not extend to a wedge compression fracture at L1, dehydration and compression of T10-11, dehydration and compression of T11-12, dehydration and compression of T12-L1, vertical schmorl's nodes at T11, or vertical schmorl's nodes at T12. The carrier responded to the claimant's cross-appeal, urging affirmance of the disputed extent-of-injury determination.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that on (date of injury), the claimant sustained a compensable injury in the form of a cervical strain, right shoulder strain, muscle strain of the chest wall, sprain of muscle and tendon of the back wall of the thorax, lumbosacral strain, and contusion of the right side of the back. The claimant testified that he was injured when he was cutting a bundle of scaffolding materials that opened and fell onto him. At issue was the extent of the compensable injury, MMI, and IR. We note that the address listed in the ALJ's decision and order for the carrier's registered agent for

service of process is not the same address listed in the carrier information sheet admitted into evidence as ALJ's Exhibit No. 2.

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951).

EXTENT OF INJURY

That portion of the ALJ's extent-of-injury determination that the compensable injury of (date of injury), extends to a wedge compression fracture at T11, wedge compression fracture at T12, endplate compression fracture at T11, and endplate compression fracture at T12 is supported by sufficient evidence and is affirmed.

That portion of the ALJ's extent-of-injury determination that the compensable injury of (date of injury), does not extend to dehydration and compression of T10-11, dehydration and compression of T11-12, dehydration and compression of T12-L1, vertical schmorl's nodes at T11, or vertical schmorl's nodes at T12 is supported by sufficient evidence and is affirmed.

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*.

The ALJ based his determination of the extent of injury, in part, on a report from (Dr. U), a required medical examination doctor. In his discussion of the evidence, the ALJ noted, in part, that Dr. U opined that the wedge compression fracture at L1 was not related to the compensable injury. However, Dr. U in his May 29, 2018, report noted that the wedge compression fracture at L1 is a direct result of the injury and is related to the mechanism of injury. Dr. U included the wedge compression fracture at L1 in the

MMI/IR certification that considered the conditions the "physician believes to be compensable."

A review of the record reflects that Dr. U opined that the wedge compression fracture at L1 was part of the compensable injury. The ALJ's statement that Dr. U opined that the wedge compression fracture at L1 was not related to the compensable injury is a misstatement of the evidence. While the ALJ can accept or reject in whole or, in part, the evidence regarding the claimed injury, his decision in this case is based, in part, upon a misstatement of the medical evidence in the record.

Accordingly, we reverse that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to the wedge compression fracture at L1, and remand to the ALJ for further action consistent with this decision.

MMI/IR

Because we have reversed and remanded a portion of the extent-of-injury issue, we also reverse the ALJ's determinations that the claimant reached MMI on February 28, 2018, and the claimant's IR is 10%, and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

We note that the carrier correctly pointed out that the ALJ misnumbered the conclusion of law regarding the claimant's IR. Additionally, we note that the certification of Dr. U was dated May 29, 2018, not October 12, 2018, as listed in Finding of Fact No. 7.

SUMMARY

We affirm that portion of the ALJ's extent-of-injury determination that the compensable injury of (date of injury), extends to a wedge compression fracture at T11, wedge compression fracture at T12, endplate compression fracture at T11, and endplate compression fracture at T12.

We affirm that portion of the ALJ's extent-of-injury determination that the compensable injury of (date of injury), does not extend to dehydration and compression of T10-11, dehydration and compression of T11-12, dehydration and compression of T12-L1, vertical schmorl's nodes at T11, or vertical schmorl's nodes at T12.

We reverse that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to the wedge compression fracture at L1, and remand to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on February 28, 2018, and we remand the MMI issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is 10% and we remand the IR issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to correct his misstatement of the medical evidence in the record. Additionally, the ALJ should correct the address of the carrier's registered agent for service of process based on the carrier information sheet. The ALJ shall consider all of the evidence and make a determination on whether the compensable injury of (date of injury), extends to a wedge compression fracture at L1, and make a determination on the issues of MMI and IR.

(Dr. D) is the designated doctor in this case. If necessary, on remand the ALJ is to determine whether Dr. D is still qualified and available to be the designated doctor. If Dr. D is no longer qualified or available to serve as the designated doctor and it is necessary for the ALJ to obtain a new MMI/IR certification, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the (date of injury), compensable injury. The parties are to be provided with the designated doctor's new certification of MMI and IR and are to be allowed an opportunity to respond. The ALJ is then to make a determination on 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 ALJ, 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.

According to the carrier information sheet in evidence at the CCH, the true corporate name of the insurance carrier is **ACCIDENT FUND INSURANCE COMPANY OF 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.

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge