APPEAL NO. 220457
FILED MAY 12, 2022

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 February 9[1], 2022, 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), does not extend to left shoulder bicipital tendinitis, lumbar disc displacement, right knee sprain, cervical spondylosis at C3-4, C4-5, C5-6, or C6-7, lumbar spondylosis at L5-S1, L5-S1 disc bulge, cervical disc bulges at C3-4 through C6-7, cervical stenosis at C4-5 or C5-6, thoracic sprain/strain, supraspinatus tendinosis, bilateral stenosis at C6-7, left shoulder spondylosis, or left shoulder sprain/strain; (2) the appellant (claimant) reached maximum medical improvement (MMI) on July 10, 2020; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appealed, disputing the ALJ's determinations of the extent of the compensable injury as well as MMI and IR. The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that: (1) on (date of injury), the claimant sustained a compensable injury; (2) the compensable injury of (date of injury), extends to a lumbar sprain and a cervical sprain; and (3) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. A) as designated doctor to address MMI, IR, and the extent of the compensable injury. The claimant testified he was injured on (date of injury), when he slipped and fell.

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).

[1] The ALJ erroneously indicates in the decision that the CCH was held on February 8, 2022.

EXTENT OF INJURY

That portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to left shoulder bicipital tendinitis, lumbar disc displacement, right knee sprain, cervical spondylosis at C3-4, C4-5, C5-6, or C6-7, lumbar spondylosis at L5-S1, L5-S1 disc bulge, cervical disc bulges at C3-4 through C6-7, cervical stenosis at C4-5 or C5-6, supraspinatus tendinosis, bilateral stenosis at C6-7, left shoulder spondylosis, or left shoulder sprain/strain is supported by sufficient evidence and is affirmed.

At issue was also whether the compensable injury of (date of injury), includes a thoracic sprain/strain. In her discussion the ALJ stated that in this case the disputed conditions with the exception of the right knee sprain and left shoulder sprain/strain are sufficiently complex and require expert medical causation evidence to establish compensability.

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*.

However, where the subject is one where the fact finder has the ability from common knowledge to find a causal connection, expert evidence is not required to establish causation. *See* APD 120383, decided April 20, 2012, where the Appeals Panel rejected the contention that a cervical strain requires expert medical evidence; 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 130808, decided May 20, 2013, where the Appeals Panel held that Grade II cervical sprain/strain and Grade II lumbar sprain/strain do not require expert medical evidence. *See also* APD 130915, decided May 20, 2013; and APD 141478, decided September 11, 2014.

The ALJ is requiring expert evidence of causation with regard to the thoracic sprain/strain to establish causation. Although the ALJ could accept or reject in whole or in part the claimant's testimony or other evidence, the ALJ is requiring a higher standard than is required under the law, as cited in this decision, to establish causation for the

thoracic sprain/strain. Accordingly, we reverse that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to a thoracic sprain/strain and we remand that portion of the extent-of-injury issue to the ALJ to make a determination consistent with this decision.

MMI/IR

Given that we have reversed a portion of the ALJ's extent-of-injury determination and remanded that issue to the ALJ to make a determination consistent with this decision, we reverse the ALJ's determinations that the claimant reached MMI on July 10, 2020, and that the claimant's IR is zero percent, and we remand the issues of MMI and IR to the ALJ to make a determination consistent with this decision.

SUMMARY

We affirm that portion of the ALJ's extent-of-injury determination that the compensable injury of (date of injury), does not extend to left shoulder bicipital tendinitis, lumbar disc displacement, right knee sprain, cervical spondylosis at C3-4, C4-5, C5-6, or C6-7, lumbar spondylosis at L5-S1, L5-S1 disc bulge, cervical disc bulges at C3-4 through C6-7, cervical stenosis at C4-5 or C5-6, supraspinatus tendinosis, bilateral stenosis at C6-7, left shoulder spondylosis, or left shoulder sprain/strain.

We reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to a thoracic sprain/strain and we remand that portion of the extent-of-injury issue to the ALJ to make a determination consistent with this decision.

We reverse the ALJ's determinations that the claimant reached MMI on July 10, 2020, and the claimant's IR is zero percent, and we remand the issues of MMI and IR to the ALJ to make a determination consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ should analyze the evidence in the record using the correct standard to determine whether or not the claimant met his burden of proof to establish causation for the condition of thoracic sprain/strain.

Dr. A is the designated doctor. If a new certification of MMI and IR is necessary in this case, the ALJ is to determine whether Dr. A is still qualified and available to be the designated doctor. If Dr. A is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to Division rules to determine MMI and IR. The ALJ is to inform the designated doctor that the compensable injury extends to a lumbar sprain and a cervical sprain, but it does not extend to left shoulder bicipital tendinitis, lumbar disc displacement, right knee sprain,

cervical spondylosis at C3-4, C4-5, C5-6, or C6-7, lumbar spondylosis at L5-S1, L5-S1 disc bulge, cervical disc bulges at C3-4 through C6-7, cervical stenosis at C4-5 or C5-6, supraspinatus tendinosis, bilateral stenosis at C6-7, left shoulder spondylosis, or left shoulder sprain/strain. The parties are to be provided with the ALJ's letter to the designated doctor, the designated doctor's response, and allowed an opportunity to respond. The ALJ is to make determinations which are supported by the evidence on extent of injury, 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 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 **HARTFORD CASUALTY 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