

APPEAL NO. 220934
FILED JULY 29, 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 was held on May 9, 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 a cervical sprain/strain, right shoulder strain, right shoulder adhesive capsulitis, complex regional pain syndrome (CRPS), disc protrusion at C5-6, disc protrusion at C6-7, or right hand algoneurodystrophy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on June 10, 2021; and (3) the claimant's impairment rating (IR) is 11%.

The claimant appealed, disputing the ALJ's determinations of the extent of the compensable injury as well as MMI and IR. The respondent (self-insured) responded, urging affirmance.

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 in the form of at least a dislocation of the right wrist radioulnar joint, ligament disruption of the right wrist, and a triangular fibrocartilage complex (TFCC) tear; (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. H) as designated doctor to address MMI, IR, and the extent of the compensable injury; and (3) the statutory date of MMI is June 10, 2021. The claimant testified he was injured on (date of injury), while unloading a patient from an ambulance.

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 determination that the compensable injury of (date of injury), does not extend to right shoulder adhesive capsulitis, CRPS, disc protrusion at C5-6, disc protrusion at C6-7, or right hand algoneurodystrophy is supported by sufficient evidence and is affirmed.

At issue was also whether the compensable injury of (date of injury), includes a cervical sprain/strain or a right shoulder strain. In his discussion the ALJ stated that "[n]o doctor or other qualified medical expert has persuasively explained a causal relationship between the compensable injury and the claimed conditions based on a reasonable medical probability."

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 cervical sprain/strain and right shoulder 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 cervical sprain/strain and right shoulder strain. Accordingly, we reverse that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to a cervical sprain/strain or a right shoulder 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 June 10, 2021, and that the claimant's IR is 11%, and we remand the issues of MMI and IR to the ALJ to make a determination consistent with this decision.

Pursuant to Section 410.203(c), the Appeals Panel may not remand a case more than once. Given that we are remanding this case to the ALJ, we note that the certification from Dr. H, the designated doctor, considered and rated anxiety and depression which have not yet been determined to be part of the compensable injury. Additionally, Dr. H made a mathematical error when assessing impairment for decreased sensitivity for the right wrist. Dr. H, using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides), assessed 7% impairment for a sensory deficit of the claimant's right wrist. Dr. H multiplied 7% from Table 15 on page 3/54 for ulnar (below midforearm) with 80% from Grade 4 of Table 11 on page 3/48. In his narrative report, following the instructions of the AMA Guides, Dr. H multiplied 7% by 80%. However, Dr. H stated that resulted in 5.4% and rounded down to assess 5%. We note 7% multiplied by 80% results in 5.6% and not 5.4% as indicated by Dr. H.

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 right shoulder adhesive capsulitis, CRPS, disc protrusion at C5-6, disc protrusion at C6-7, or right hand algoneurodystrophy.

We reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to a cervical sprain/strain or right shoulder 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 June 10, 2021, and the claimant's IR is 11%, 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 conditions of cervical sprain/strain or a right shoulder strain.

Dr. H is the designated doctor. The ALJ is to determine whether Dr. H is still qualified and available to be the designated doctor. If Dr. H 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 dislocation of the right wrist radioulnar joint, ligament disruption of the right wrist, and a TFCC tear but does not extend to right shoulder adhesive capsulitis, CRPS, disc protrusion at C5-6, disc protrusion at C6-7, or right hand algoneurodystrophy. The ALJ is to request from the designated doctor a certification of MMI and IR on the compensable injury and if necessary, an alternate certification of MMI/IR on the compensable injury and the disputed extent-of-injury conditions of cervical sprain/strain and right shoulder 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. The ALJ should inform the designated doctor of the mathematical mistake in determining sensory impairment for the claimant's right wrist.

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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge