APPEALS PANEL DECISION SUMMARIES
(July 22, 2013 - 132528 (Dec. 10, 2013)
http://www.tdi.texas.gov/appeals/2013cases

Don't rely on the summaries for your arguments. Make sure the decision applies to your case. My summaries focus on why the decision was overturned. I don't go into great depth so any decision may say more than what I write/cut/paste from the AP decision. I try to hit the highlight, even if there are other reasons the hearing officer's decision was overturned. I also do not write about typographical errors that may have been made that resulted in a reversal. Ken Wrobel

130795 – The hearing officer made a calculation error in determining AWW based on a same or similar employee.

130865 - The Division's Attorney Fee Processing System reflects the attorney provided a justification text for the fees requested. There is no log text reflecting why the hearing officer reduced the hourly rate requested or if the hearing officer considered the attorney's justification text. The hearing officer abused his discretion by reducing the hourly rate requested without explanation.

130881 – SIBs case based on total inability. None of the medical reports in evidence constitute a narrative report from a doctor which specifically explains how the compensable injury caused a total inability to work in any capacity.

130888 – Designated Doctor's narrative did not mention the disc herniation at L4-5 or the lumbar degenerative disc disease at L4-5 and L5-S1 that were found compensable. Designated Doctor did not rate the entire compensable injury.

130943 - The parties stipulated that the compensable injury includes a cervical strain syndrome, cerebral contusion, anxiety syndrome, and contusion of the head. The hearing officer's determination that the compensable injury extends to a post-concussion syndrome and contusion of the head was affirmed. Doctor did not rate or consider all of the compensable injury in certifying Claimant's IR.

130950 – The Designated Doctor opined the disputed conditions were part of the compensable injury but he did not have all the medical records. The reports did not provide the required causally related link to establish causation between the mechanism of injury and these conditions.

130961 – The Designated Doctor determined the date of MMI not by specifically considering Claimant's physical examination and medical records but by applying the number of days the MDA states are considered a maximum for medically treated lumbar disc disease. The Designated Doctor did not base the certified date of MMI on Claimant's physical examination and medical records but rather he based his determination of MMI solely on the MDA. Accordingly, the hearing officer's determination of MMI is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

130971 - The hearing officer failed to note in the decision and order that she was adding the waiver issue, but did make findings of fact and conclusions of law on that issue, and determined Carrier 1 waived the right to contest compensability of the claimed injury by not contesting compensability in accordance with Section 409.021. A review of the record reveals that the parties did actually litigate the waiver issue at the CCH.

131005 – SIBs case based on active work search effort. Claimant documents four job contacts in the third week. Claimant did not meet the requirement of making five job searches during each week of the qualifying period.

131006 - Dr. B opined the work injury "caused [Claimant] to experience pain and physical limitations which produced the pain disorder associated with psychological factors and a general medical condition, mood disorder, and cognitive disorder." Under the facts of this case, Dr. B's letter of causation was sufficient expert medical evidence to establish causation for most of the extent of injury conditions. However, there is insufficient expert medical evidence linking a "possible diffuse axonal shearing injury" and "general medical condition" to the compensable injury. Under the facts of this case, the inference and mere recitation of a "possible" injury and "general medical condition" does not establish by expert evidence that these conditions are related to the compensable injury within a reasonable degree of medical probability. The medical evidence and Claimant's testimony that he returned to work during the disability period in dispute do not support the hearing officer's determination that Claimant had disability for the entire period in dispute.

131006 - Carrier contended the hearing officer erred as a matter of law: by not notifying the carrier the hearing officer was sending a letter of clarification (LOC) to the designated doctor; by not sending a copy of the LOC to the carrier's attorney; by not sending a copy of the designated doctor's response to the carrier's attorney; and by not giving the carrier's attorney an opportunity to present additional evidence and argument concerning the new evidence offered into evidence as identified in the hearing officer's decision and order as Hearing Officer's Exhibit No. 4. A copy of the LOC was sent to Claimant, claimant's attorney, carrier, and treating doctor. The response indicates that copies were mailed to the carrier, claimant, claimant's representative, and treating doctor. As previously noted there was no evidence that a copy of the designated doctor's response was sent to the carrier's representative. There is no evidence the hearing officer gave the parties the opportunity to respond to the designated doctor's response prior to closing the record and issuing a decision.

131007 – In the Background Information portion of his decision and order, the hearing officer stated, "[a] designated doctor was appointed in part to determine whether an injury resulted from the claimed incident. But the designated doctor did not address that issue." However, the Designated Doctor did opine that the mechanism of injury alleged was consistent with a lumbar sprain/strain. The hearing officer incorrectly stated the designated doctor did not address whether an injury resulted from the claimed incident.

131015 - With regard to the sexual dysfunction condition Dr. B states that, "Please note that decreased libido is one of the diagnostic criteria of a mood disorder and would not be

independent of that diagnosis. Therefore, there is no separate diagnosis, in reasonable medical probability, for sexual dysfunction." The hearing officer's opinion that the compensable injury included sexual dysfunction was not supported by the evidence.

131056 - 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides the assignment of an impairment rating 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. The Designated Doctor said the date of MMI according to the Medical Disability Advisory for heavy work return to work after conservative treatment was twelve weeks. The Appeals Panel has held the MDA cannot be used alone, without considering Claimant's physical examination and medical records, in determining a claimant's date of MMI.

131084 - The DWC-3 contained a mathematical error in adding the reported gross wages for the 13 weeks.

131085 - The Appeals Panel has previously held the MDA cannot be used alone without considering Claimant's physical examination and medical records in determining a claimant's date of MMI. Designated Doctor based his date of MMI on the MDA without considering Claimant's physical examination and medical records. His MMI/IR certification cannot be adopted.

131087 – Designated Doctor's certification claimant reached MMI with a zero percent IR cannot be adopted. The Appeals Panel has held the MDA cannot be used alone, without considering Claimant's physical examination and medical records, in determining a claimant's date of MMI.

131095 – Several doctors did not rate the entire compensable injury. One doctor did. That doctor's certification was used.

131106 – Claimant's compensable injury was a lumbar sprain/strain and two lumbar disc bulges. The Designated Doctor placed Claimant in DRE Category II. However, his rating only included the lumbar sprain/strain and not the lumbar disc bulges. The certification claimant reached MMI did not consider the entire compensable injury and it could not be adopted.

131110 – Designated Doctor's MMI/IR certification could not be adopted because it did not consider the entire compensable injury.

131110 – Dr. P clearly based the six percent impairment rating on the ROM measurements taken during a February 20, 2012, office visit and not on the ROM measurements taken during the March 26, 2013, examination. The office note relied upon by Dr. P for the ROM findings are not in evidence. Dr. P does not otherwise discuss the February 20, 2012, office note or list the ROM measurements contained in that note. Dr. P's reliance on an office note not in evidence on which to base her six percent IR does not comply with Rule 130.1(c)(3), and as such it cannot be adopted.

131165 – Designated Doctor considered the conditions found not to be part of the compensable injury in determining Claimant's MMI and impairment rating in all the certifications of MMI and impairment rating in evidence; therefore, none of his certifications could be adopted.

131176 - The sole issue before the hearing officer was as follows: Is claimant beneficiary 2, biological father, or claimant beneficiary 1, stepfather, a proper legal beneficiary of Decedent entitling either of them to death benefits? Claimant beneficiary 1 testified at the CCH that at the time of his death, the Decedent was living in the household of claimant beneficiary 1 without paying rent. If there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased, the death benefits shall be paid in equal shares to surviving eligible parents of the deceased. A payment of death benefits under this subsection may not exceed one payment per household. Section 408.182(f)(4) defines "eligible parent" as the mother or the father of a deceased employee, including an adoptive parent or stepparent. Although much of the testimony at the CCH discussed the lack of contact and support of claimant beneficiary 2, there was no evidence presented that the parental rights of claimant beneficiary 2 had been terminated. It was undisputed claimant beneficiary 2 was the biological father of the decedent. That portion of the hearing officer's determination claimant beneficiary 2 is a proper legal beneficiary of decedent entitling him to death benefits is supported by sufficient evidence and is affirmed.

The statutory definition of eligible parent quoted above defines eligibility in terms of the familial relationship with the decedent with the only exclusion being the termination of parental rights. *See also* Rule 132.11(e). The evidence established at the time of the decedent's death, claimant beneficiary 1 was married to the decedent's biological mother and was the decedent's stepfather. There is nothing in the language of Section 408.182(f)(4) to suggest that certain types of parents, such as stepparents be treated differently than other parents. Although Section 408.182(d-1) provides that a payment of death benefits made under this subsection may not exceed one payment per household, it also provides that death benefits shall be paid in equal shares to surviving eligible parents of the deceased. The Appeals Panel reversed the hearing officer's determination claimant beneficiary 1 is not a proper legal beneficiary of decedent and is not entitled to death benefits and rendered a new decision that claimant beneficiary 1 is a proper legal beneficiary of decedent and is entitled to death benefits.

131201 - Because Designated Doctor did not consider or rate the entire compensable injury, his certification of MMI and IR could not be adopted.

131204 - The Appeals Panel has long held expert medical evidence is not required for strains. *See* Appeals Panel Decision (APD) 120383. The parties stipulated Claimant sustained a compensable injury to her lumbar spine at least in the form of a sprain/strain and Claimant had been diagnosed with the conditions at issue. The Appeals Panel did not agree chronic lumbar sprain/strain goes beyond the lumbar strain/sprain accepted by the self-insured. *See also* APD 130808, decided May 20, 2013.

131224 – The Designated Doctor was given a date that was the wrong date of statutory MMI. The decision was remanded to the hearing officer so the Designated Doctor could be told the correct statutory MMI date.

131251 - The Appeals Panel has held a mathematical correction to a certification of an impairment rating may be made when doing so simply corrects an obvious mathematical error and does not involve the exercise of medical judgment. The Appeals Panel corrected the rating in this case.

131252 - The hearing officer required expert evidence of causation with regard to the cervical sprain/strain, right shoulder contusion, and right hip contusion to establish causation. Although the hearing officer could accept or reject in whole or in part Claimant's testimony or other evidence, the hearing officer required a higher standard than is required under the law to establish causation.

131284 – MVA/death case. There is no bright-line rule for determining whether employee travel originated in the employer's business. Rather each situation is necessarily dependent on the facts. In the instant case, the hearing officer failed to make a finding of fact regarding the specific nature or purpose of Claimant's travel.

131286 - The Appeals Panel has previously held a Grade II cervical sprain/strain does not require expert medical evidence. The Appeals Panel has held an extent-of-injury issue is a threshold issue that must be resolved before MMI and impairment rating can be resolved, and the resolution of the MMI and IR issues will flow from the resolution of the extent issue. Given the Appeals Panel reversed the hearing officer's determination the compensable injury did not extend to a category II cervical sprain and remanded that issue to the hearing officer, they determined they must also reverse the hearing officer's determination Claimant reached MMI and remanded the issues of MMI and impairment rating.

131323 - In APD 062068, the Appeals Panel held the 1989 Act and the Division rules require the designated doctor conduct an examination of Claimant and review Claimant's medical records. Rules 130.1(b)(4)(A) and 130.1(c)(3) specifically require that the certifying doctor, including the designated doctor, review the medical records before certifying an MMI date and assigning an IR." *See* APD 130187 Claimant informed the Designated Doctor that he had undergone physical therapy but the Designated Doctor did not have those records. His certification could not be adopted.

131335 – Designated Doctor and Carrier's post-Designated Doctor RME both worked for the same scheduling company. The Designated Doctor rated Claimant but that rating could not be accepted due to the disqualifying association.

131340 – Designated Doctor's did not provide a sufficient explanation on extent of injury.

131356 – The MRI did not show an annular tear at L5/S1 so that condition could not be found to be compensable.

131524 - The record did not contain the specific diagnosis of lumbar radicular syndrome secondary to foraminal stenosis at L4-5. Further, there are no medical records, including the letters from Dr. K and Dr. G, which explain how the work injury caused the claimed lumbar

radicular syndrome secondary to foraminal stenosis at L4-5 or foraminal stenosis on herniated disc at L5-S1. Claimant did not have sufficient expert medical evidence.

131541 - Dr. S did not provide an explanation of causation for the claimed conditions in his narrative report. Although the claimed conditions are listed in the record, there is not any explanation of causation for the claimed conditions in the record. Citing Appeals Panel Decision 110054 and 120041. Because of the change in the extent determination, there were no adoptable ratings. Additionally, one certifying doctor did not properly round his hand range of motion measurements to the nearest 10 degrees.

131552 – The Designated Doctor included Claimant's knee surgery in the impairment rating certification. However, the knee surgery occurred after the statutory MMI date. This was remanded because the impairment rating was not based upon the date of MMI. No other ratings were adoptable.

131554 - The hearing officer determined Claimant had not reached MMI and the impairment rating was premature. However, the parties stipulated at the CCH the date of statutory MMI was March 18, 2013. In this case the hearing officer's determination Claimant had not reached MMI is legal error. No other ratings were adoptable because they did not rate the entire compensable injury.

131580 – Claimant contended he had no ability to work. The Designated Doctor stated the following, "[Claimant] is only employable in a very limited fashion which is probably not realistic. If an ideal job could be found for him, it would involve something on the order of his being able to sit or lie down or move whenever necessary… If a suitable sedentary position could be found where he could move about from time to time pretty much at will then he would be able to accomplish that purpose. The likelihood of finding a job of that nature is pretty remote; therefore, in my opinion, he is not able to work during the periods in question." Although the doctor concludes that Claimant is not able to work, he also states that Claimant has an ability to work in that Claimant is employable in a very limited capacity and could work in a sedentary type job. Dr. A's narrative does not specifically explain how the compensable injury causes a total inability to work.

131641 - Rule 130.102(h) provides that if there is no pending dispute regarding the date of MMI or the impairment rating prior to the expiration of the first quarter supplemental income benefits (SIBs), the date of MMI and impairment rating shall be final and binding. Once the impairment rating became final pursuant to Rule 130.102(h), what was included in the underlying compensable injury was established. Carrier waived the right to dispute the rated conditions.

131641 - Dr. G only diagnosed the right shoulder chronic pain syndrome as being a "probable" diagnosis and did not specifically explain how the mechanism of the injury would cause a right shoulder chronic pain syndrome. No other medical record in evidence reflects that Claimant was diagnosed with right shoulder chronic pain syndrome. The Appeals Panel reversed that finding by the hearing officer.

131655 - A decision and order from a prior CCH held on October 1, 2012, found Claimant was not at MMI. The hearing officer noted in that first decision a designated doctor appointed by the Division examined the claimant on April 27, 2012, and placed Claimant at MMI as of January 10, 2012. After that first hearing, the Designated Doctor re-examined Claimant on December 4, 2012, and certified the claimant reached MMI on January 10, 2012, and assigned an eight percent impairment rating. The Designated Doctor concluded the claimant was at MMI since no significant change or treatment had been rendered since he last rendered an opinion on MMI so the date of January 10, 2012, remained appropriate. However, at that first exam, the Designated Doctor only rated a hip strain and not the compensable degenerative changes. The hearing officer specifically found in the CCH held on October 1, 2012, that "Dr. F found if the claimant's injury included the aggravation of the pre-existing right hip degenerative joint disease, the claimant has not reached [MMI]." As previously noted, this finding of fact was not appealed. The hearing officer determined in the prior CCH that the compensable injury of [date of injury], extends to degenerative joint disease of the right hip. Accordingly, the hearing officer's determination that the claimant reached MMI on January 10, 2012, is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. When it was remanded the Appeals Panel gave the instructions the MMI date could be later than the statutory date of MMI (s*ee* Section 401.011(30)) or earlier than April 27, 2012, the date of the prior examination of Dr. F on which the hearing officer based his unappealed finding of fact (from the October 1, 2012, CCH) that the claimant was not at MMI.

131688 - Dr. R opined "[t]here is also the possibility that the work related injury [the claimant] recently sustained may have caused a partial pull out of the previously placed ACL fixation hardware and therefore causing a mechanical impingement in his knee." Dr. R did not offer an explanation of how the compensable injury actually caused a protrusion of ACL fixation hardware; he only acknowledged it was a possibility. The record did not contain an adequate expert causation explanation of the ACL fixation hardware problem from any other doctor.

131670 - Based on Dr. M's measurements and the AMA Guides the assigned impairment for ulnar and radial deviation are correct; however, the assigned impairment for flexion and extension are incorrect. The AP corrected the mathematical calculation.

131673 - Dr. P based his determination of MMI solely on the MDA. This was not adoptable. No other ratings in evidence were adoptable.

131674 - In a D&O dated December 1, 2011, the hearing officer found in Finding of Fact No. 5 that "[o]n July 7, 2011 [the] [c]laimant's treating doctor [Dr. B], MD, stated that [the] [c]laimant has not reached [MMI] because he is a surgical candidate." The hearing officer determined that the claimant had not reached MMI and therefore IR could not yet be determined. The issue of MMI was previously litigated on November 29, 2011, and a decision was rendered on December 1, 2011, that the claimant had not reached MMI. In this decision, it was determined by the AP any date prior to July 7, 2011, is included in the December 1, 2011, determination that the claimant had not reached MMI. Therefore, a date of MMI that is prior to July 7, 2011, cannot be adopted.

131684 - The extent of injury determination was overturned so the decision was remanded to determine extent of injury. Then the hearing officer was to determine MMI and impairment rating.

131730 – The certifying doctor rated Claimant by using the Medical Disability Advisor for heavy work, and for maximum days for return to duty. The Appeals Panel previously held the MDA cannot be used alone, without considering the claimant's physical examination and medical records, in determining a claimant's date of MMI. *See* Appeals Panel Decision (APD) 130191, decided March 13, 2013, APD 130187, decided March 18, 2013.

131782 - Claimant relied on a causation letter from [Dr. G]" and that causation letter "provides an explanation and rationale for his opinion" that the compensable injury caused the extent-of-injury conditions in dispute. However, Dr. G did not specifically reference in that letter the condition of lumbar spine moderate to severe neural foraminal stenosis. Furthermore, in Appeals Panel Decision (APD) 120041, decided March 12, 2012, the Appeals Panel stated "[w]hile the claimed conditions are all mentioned in various reports and diagnostic studies, there is insufficient medical evidence linking the claimed conditions to the compensable injury or explaining how the mechanism of the injury caused the claimed conditions." That portion of the hearing officer's determination the compensable injury of [date of injury], extends to lumbar spine moderate to severe neural foraminal stenosis was so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

131784 - Under the facts of this case, where the carrier filed a dispute after the conclusion of a BRC and prior to a CCH of conditions previously considered to be a part of the compensable injury and the issue of extent is raised for the first time at the CCH, we hold that the hearing officer abused her discretion in denying the claimant's request for a continuance to further develop the extent-of-injury dispute.

131790 – This case involved two dates of injury. Claimant's ombudsman stated in closing argument that the injury of date of injury No. 2 did not exist. The carrier agreed with the claimant's position and stated in closing argument that it agreed to accept that the claimant did not have a date of injury No. 2, right repetitive trauma injury. Review of the record does not indicate that the parties agreed to withdraw the issues in Docket No. 2. The hearing officer did not make determinations on the issues in Docket No. 2. Accordingly, the AP reversed the hearing officer's decision.

131804 – Designated Doctor failed to comply with the requirements of Rule 130.1(c)(3) because he did not include any information in his narrative report to establish how he arrived at his assessment of impairment for the claimant's compensable injury. Furthermore, the Designated Doctor did not discuss or mention what diagnoses he considered and rated in his certification of MMI and impairment rating.

131890 - The parties stipulated the self-insured received its first written notice of the claimed injury on September 27, 2011, and the self-insured filed its PLN-1 with the Division on November 23, 2011. Therefore, it is undisputed that the self-insured filed a notice of denial after the 15th day but before the 60th day after receipt of written notice of the injury. Pursuant to Rule

124.3, the carrier is liable for the payment of accrued benefits. See APD 021558, decided August 7, 2002, the Appeals Panel cited APD 012101-s, decided, October 22, 2001.

131902 - There are four certifications of MMI/IR in evidence. None of these were adoptable. The D&O was reversed on MMI/impairment rating and to determine the statutory MMI date.

131935 - Parties stipulated at the CCH held the compensable injury extends to a meniscal tear of the left knee. That stipulation was final and binding. Given the parties stipulated the compensable injury extended to the meniscal tear of the left knee and that the stipulation was final and binding, it must be determined whether or not the disputed large bucket handle tear of the lateral meniscus of the left knee is a different condition from the accepted meniscal tear of the left knee.

131971 - At issue in this case was whether the compensable injury extended to a right wrist fracture. In Conclusion of Law No. 3 and the decision, the hearing officer determined that the compensable injury extended "to a right wrist injury, including a fracture." The only extent-of-injury condition at issue before the hearing officer was a right wrist fracture. The hearing officer's determination the compensable injury extends to a right wrist injury including a fracture could be read as addressing more than the only condition before him. Accordingly, the Appeals Panel reformed the hearing officer's decision by striking "injury, including a" as surplusage language in Conclusion of Law No. 3 and the decision, to read as: "the compensable injury of [date of injury], extends to a right wrist fracture."

131978 – The Designated Doctor did not properly calculate his ratings. Additionally, the preponderance of the medical evidence supported the Claimant was nota at MMI as of the date certified by the Designated Doctor. There was no certification Claimant was not a at MMI but the two impairment ratings in evidence were not supported by the evidence. The other certification had the wrong stat MMI date.

131996 – The parties stipulated on the record the injury was to the left knee but it was actually the right knee that was injured. The case was remanded back to the hearing officer to remand for a determination of whether good cause existed to set aside the parties' stipulation the compensable injury extended to a left knee sprain/strain. If good cause was found to exist, the hearing officer should receive a new stipulation as to whether the compensable injury extended to either a right knee or a left knee sprain/strain.

132010 – Parties stipulated Claimant injured her left shoulder. Claimant then testified she did not understand why everyone agreed to the left shoulder when she never hurt her left shoulder. She injured her right shoulder. The hearing officer mistakenly made FoF and CoL on the left shoulder. The Appeals Panel further noted that whether a good and sufficient cause exists is to be determined from the facts as they stand at the time the party seeks to set aside the agreement. APD 950625

132028 - At the CCH, the parties stated that they were in agreement with the designated doctor's certification of MMI/IR; however, they were disputing the extent of the compensable injury. With regard to the extent-of-injury issue, the hearing officer determined, in part, the claimant's

compensable injury did not extend to lumbar radiculopathy. However, the hearing officer permitted an agreement by the parties the claimant's impairment rating was 10% per the designated doctor. Furthermore, as previously mentioned, the hearing officer included a footnote in her decision the parties agreed on the disputed issues of MMI and impairment rating. However, the hearing officer failed to make any findings of fact or conclusions of law in her decision regarding the MMI and impairment rating issues. With regard to the disability issue, the parties agreed to not litigate the disability issue; however, the parties did not specifically agree to withdraw the disability issue.

132055 – Parties agreed the impairment rating was 10% based on lumbar radiculopathy. Lumbar radiculopathy was found to be not part of the compensable injury. Claimant argued since the 10% was agreed to by the parties, the lumbar radiculopathy was rated and became part of the compensable injury. There was no issue about finality. The AP remanded the decision for the hearing officer to make FoF and CoL on whether there was a valid first rating and finality of the impairment rating.

132061 – Designated Doctor's certification Claimant reached MMI with a one percent impairment rating could be adopted. The Appeals Panel previously held the MDG could be used alone without considering the claimant's physical examination and medical records in determining a claimant's date of MMI.

132062 - The Hearing Officer rejected the Designated Doctor's certification because it relied solely on the MDG to determine MMI and instead adopted the treating doctor's certification. However, the treating doctor never explained the claimant's date of MMI, while the Designated Doctor did explain more than the MDG (specifically, the ODG, expected treatment/resolution, and duration) was utilized to determine the MMI date. The case was remanded because the Hearing Officer adopted an inadequate certification and misread the Designated Doctor's opinion.

132089 - Dr. S improperly utilized Figure 29 on page 3/38 of the AMA Guides in assessing three percent impairment for the claimant's left wrist. Dr. S measured 15 degrees of radial deviation and assessed one percent impairment; Dr. S failed to round the measurements of radial deviation of the wrist to the nearest 10 degrees to determine the UE impairment.

132109 - The Appeals Panel has, on numerous occasions, rejected the contention that a sprain/strain required expert medical evidence to establish causation. *See* Appeals Panel Decision (APD) 130160, decided March 18, 2013; APD 120383, decided April 20, 2012; APD 992946, decided February 14, 2000; APD 952129, decided January 31, 1996. *See also* APD 130808, decided May 20, 2013. The hearing officer was requiring expert medical evidence to establish causation between the compensable injury and right wrist sprain/strain and left wrist sprain/strain. The hearing officer was requiring a higher standard than required under the law to establish causation.

132117 - The parties stipulated to the compensable injury, which did not include a hernia. The treating doctor assigned the first impairment rating at 22%, which included a 5% impairment rating for a hernia. This first impairment rating was not timely challenged and became final

unless one of the exceptions specified in Section 408.123 of the Labor Code applied. The Hearing Officer found that an exception did apply. Because the hernia was a non-compensable injury, the Hearing Officer determined that the certifying doctor committed a significant error in calculating the impairment rating that qualified as an exception to finality under Section 408.123. The Appeals Panel reversed and rendered finding, "There is no provision in either Section 408.123 or Rule 130.12 that states that the mere inclusion of a (non-compensable) condition in an assignment of impairment rating constitutes an exception for finality." The majority "decline[d] to follow any prior cases that may have read such an interpretation" into the regulations. A dissent to the majority opinion would have affirmed the Hearing Officer, citing precedent "that rating a condition not included in the compensable injury is an exception to the finality rule."

132121 - Part of the extent of injury issue was affirmed, but the remainder (sciatica and sacroiliitis) required expert medical evidence the hearing officer deemed sufficient. However, though the conditions were diagnosed, no medical records explained how the injury caused the sciatica and sacroiliitis. That portion of the decision was reversed and rendered as against the great weight and preponderance of the evidence.

132126 - The Division's Attorney Fee Processing System reflected the attorney provided a justification text for the fees requested. The hearing officer's log text regarding the Order Sequence No. 16 denying the fees stated the fees were denied because a determination of entitlement to second quarter SIBs was currently pending at the Appeals Panel. Division records reflected the hearing officer's determination the claimant was entitled to second quarter SIBs by virtue of waiver had become final. Accordingly, the Appeals Panel reversed the hearing officer's denial of the requested attorney's fees and remanded the attorney's fees requested in Sequence No. 16 to the hearing officer for further consideration. Claimant's attorney charged $200.00 per hour for the SIBs case. The Appeals Paned noted Rule 152.4(d) provides for a maximum hourly rate for legal services by an attorney of $150.00; however, pursuant to Rule 152.1(f), Rule 152.4 regarding guidelines for legal services does not apply to a claimant's attorney's fees where the claimant prevails in a SIBs dispute. APD 970805, decided June 18, 1997.

132127 – Appeal was over Claimant's attorney fees for SIBs dispute. Claimant won the first quarter but lost quarters 2-5. There were three fee sequences involved. Seq. 54 was approved by the Division so it needed a CCH. That was scheduled so the appeal to the Appeals Panel was dismissed. Seq. 55 and Seq. 56 were approved by a hearing officer so they needed to be appealed directly to the Appeals Panel. The Appeals Panel has held that where an adjudication of a SIBs dispute has resulted in a determination of entitlement to some quarters and nonentitlement to other quarters, the hearing officer entering the order on attorney's fees must allocate the fees amongst the different quarters in that the carrier is only liable for the portion of the fees attributable to the SIBs quarters to which it disputed the claimant's entitlement and on which the claimant later prevailed. The allocation was not done so the Appeals Panel remanded Seq. 55 and Seq. 56 back to the hearing officer.

132148 - Issues in the case were MMI and impairment rating. The Hearing Officer determined that Claimant had not reached MMI and an impairment rating was premature. The Hearing Officer referenced a report in evidence from Claimant's surgeon to support the determination

that Claimant had not reached MMI. The Appeals Panel noted the Hearing Officer misread that report which actually indicated the doctor was in agreement with another doctor's determination Claimant had reached MMI in May 2012. The Appeals Panel reversed the Hearing Officer's determinations on the MMI/impairment rating issues and remanded the case back to the Hearing Officer to make a determination on those issues based on the evidence.

132159 - The hearing officer in both his conclusion of law and his decision determined the claimant sustained an injury on [date of injury]. However, the disputed issue was whether the claimant sustained a compensable injury. Compensation is not payable for the injury claimant sustained because the hearing officer found that [employer] was not the claimant's employer for purposes of the 1989 Act; therefore, he did not sustain a compensable injury. There are two Work Status Reports (DWC-73s) in evidence which reference the dates of disability found by the hearing officer. However, the claimant testified that he returned to work performing a different job with an employer who would work with his limitations on May 29, 2013. That portion of the hearing officer's determination that the injury of [date of injury], was a cause of claimant's inability to obtain and retain employment from May 3 through June 7, 2013, is not supported by the evidence. The Appeals Panel rendered a decision the claimant did not sustain a compensable injury on [date of injury]. Accordingly, we reverse the hearing officer's determination the claimant had disability from the injury on [date of injury], from February 25 through February 28, 2013, and from May 3 through June 7, 2013, and render a new decision that the claimant did not have disability because the claimant did not sustain a compensable injury.

132173 - There are multiple certifications in evidence from the designated doctor and two alternative certifications from the carrier-selected required medical examination doctor. None of them properly rate the entire compensable injury. One rating incorrectly tried to apply DRE Category IV and/or V.

132180 - [Dr. S] wrote a letter explaining the action of the claimant in pulling and straining on the metal pipe caused the disputed conditions with sudden onset of left sided low back symptoms. Dr. S did not identify the specific findings he is referencing nor did Dr. S refer to a diagnostic test which would identify specific conditions. His opinion was insufficient to support a finding the disputed conditions were compensable.

132195 - Hearing Officer found the compensable injury extended to include several conditions of the right shoulder. Although most of the conditions were mentioned in medical records, the Appeals Panel found no one explained how the compensable injury caused such conditions. Appeals Panel rendered a decision the compensable injury does not extend to include the disputed right shoulder conditions. The mere recitation of the claimed conditions in the medical records without attendant explanation of how those conditions may be related to the compensable injury does not establish those conditions are related to the compensable injury within a reasonable degree of medical probability.

132215 - Issues included MMI and impairment rating. The Appeals Panel found that the Hearing Officer erred in adopting an impairment rating that included an incorrect calculation of Claimant's wrist impairment. In particular, the certifying doctor improperly utilized Figure 29, p. 3/38 of the AMA Guides, Fourth Edition, by rounding Claimant's wrist radial deviation

measurements to the nearest 5 degrees instead of to the nearest 10 degrees. The Appeals Panel reversed the Hearing Officer's MMI/impairment rating determinations and remanded those issues back to the Hearing Officer.

132235 – Hearing Officer found the compensable injury extended to include rotator cuff tear and determined that the impairment rating was 0% per DD's certification. Appeals Panel noted that there was no certification of 0% impairment rating in the file and that DD's certification was actually 4% impairment rating. Accordingly, Appeals Panel rendered new decision that impairment rating is 4%.

132241 - Issues were MMI and impairment rating. The Appeals Panel found that the Hearing Officer did not abuse his discretion in admitting into evidence an amended certification of MMI/IR assignment from a treating referral doctor offered by Claimant. In response to the admission of this certification of MMI/IR assignment, Carrier requested a continuance of the CCH. Carrier was unaware until shortly before the CCH that Claimant was seeking to admit the amended certification of MMI/IR assignment. The Appeals Panel found that, under the facts presented, Carrier was prevented from adequately investigating the case and its lack of information was not due to a lack of diligence on its part. The Appeals Panel, therefore, found that the Hearing Officer abused his discretion in denying Carrier's request for a continuance and reversed the Hearing Officer's MMI/IR determinations and remanded the case back to the Hearing Officer for further proceedings.

132258 - Hearing Officer found Claimant reached MMI on 7/6/12 with a 0% impairment rating and the compensable injury did not extend to HNP at L5-S1 based upon the DD's report. Appeals Panel remanded because Designated Doctor, in her report, indicated that she did not have Claimant's medical records prior to making a determination on extent of injury. On remand, Hearing Officer was to ensure Designated Doctor received all records, obtain determination of extent of injury and, if necessary, MMI and impairment rating.

132265 - Hearing Officer found Claimant did not sustain a compensable injury on 7/13/12; that Claimant had disability from 7/13/12 through 3/14/13 and the Date of Injury is 7/11/12 rather than 7/13/12. But Hearing Officer failed to include a CoL the Claimant sustained a compensable injury on 7/11/12 or to include such CoL in the decision section. Appeals Panel reversed as incomplete and rendered a new decision Claimant sustained a compensable injury on 7/11/12.

132288 - Issues included MMI and impairment rating. The Hearing Officer adopted an MMI date and impairment rating assignment from the Designated Doctor. The MMI date adopted by the Hearing Officer was prior to the date of Claimant's second surgery, which was performed to address, among other conditions, a condition that was part of Claimant's compensable injury. The Designated Doctor did not address the second surgery in his MMI opinion. As the question regarding MMI is not whether Claimant actually recovered or improved during the period at issue, but rather, whether based upon reasonable medical probability material recovery from or lasting improvement to the compensable injury could reasonably be anticipated. The Appeals Panel reversed the Hearing Officer's MMI determination and remanded it back to the Hearing Officer. The Appeals Panel also reversed and remanded the Hearing Officer's impairment rating

determination. The Appeals Panel noted that the impairment rating assignment adopted by the Hearing Officer included conditions determined not to be part of Claimant's compensable injury.

132305 - Dr. M did not specifically mention any of the specific claimed extent-of-injury conditions in his August 18, 2013, letter; rather, his letter focuses on "injuries" in the wrists, elbows, and shoulders. The Appeals Panel held Dr. M's letter was insufficient to establish causation between the compensable injury and the claimed extent-of-injury conditions.

132323 - Hearing Officer adopted Designated Doctor's 12% impairment rating, finding that, although an operative report in evidence indicated Claimant underwent distal clavicle resection, the actual arthroscopic resection procedure Claimant received would not qualify for a rating under Table 27 of The Guides. Appeals Panel remanded to Hearing Officer to make a finding whether or not Claimant underwent distal clavicle resection and, if so, to obtain an impairment rating from the Designated Doctor which included an impairment rating for the same.

132339 - Hearing officer found entitlement to SIBs but failed to include FoF regarding Claimant's theories of entitlement. Remanded for hearing officer to make FoF, CoL and decision regarding entitlement to SIBs.

132361 - Hearing officer found compensable injury extended to include lumbar radiculitis based upon Designated Doctor report indicating the compensable lumbar s/s most probably exacerbated pre-existing HNPs resulting in radiculitis. Appeals Panel rendered that compensable injury does not extend to radiculitis based upon failure of Designated Doctor or any other doctor to adequately explain how the injury extends to radiculitis.

132388 - Hearing officer adopted 11% IR assigned by Designated Doctor. Appeals Panel found that the Designated Doctor improperly used Figure 14 on page 3/28 of the Guides to assess thumb impairment when he should have used Table 5 on page 3/28. This resulted in a 1% IR for lack of abduction in the right thumb rather than 10% assessed by the DD. Accordingly; the Appeals Panel rendered a decision that the impairment rating was 9% rather than 11% per a mathematical correction.

132393 - Claimant failed to appear for CCH or to respond to 10-day letter and hearing officer rendered decision. Claimant appealed alleging it failed to appear for CCH or respond to 10-day letter because it received no "notices." Appeals Panel reversed and remanded to hearing officer to allow claimant opportunity to participate and present evidence on disputed issues.

132400 - Hearing officer found compensable injury did not extend to include cervical radiculopathy and disc bulges and Claimant reached MMI on 12/30/11 with a 5% impairment rating as certified by Designated Doctor. Appeals Panel reversed finding that Designated Doctor based MMI finding solely on the MDG without considering Claimant's physical exam and medical records. No other certification could be adopted. Remanded to hearing officer to obtain Designated Doctor opinion on MMI date and impairment rating for the claim.

132413 - The claimant argued the impairment rating by Dr. S was improperly calculated because in assessing the right shoulder ROM impairment, Dr. S used the contralateral side as a

comparison. The Appeals Panel has held there is no provision in the Guides to the Evaluation of Permanent Impairment, fourth edition which requires or prohibits that method and it is in the discretion of the certifying doctor to do so or not.

132440 - The parties stipulated at the CCH the compensable injury extends to a herniated disc at L3-4. Dr. F mades clear in his narrative report he did not consider and rate a herniated disc at L3-4, which is part of the compensable injury. As Dr. F did not consider and rate the entire compensable injury, his MMI/IR certification could be adopted.

132528 – The Appeals Panel corrected a mathematical error in the Designated Doctor's calculation of the impairment rating.