

APPEAL NO. 980214
FILED MARCH 20, 1998

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 20, 1998, a contested case hearing (CCH) was held with hearing officer. With respect to the only issue before him in this case, the hearing officer determined that the appellant's (claimant) compensable left shoulder injury of _____, does not extend to, or include, his left elbow or wrist.

Claimant appeals, essentially claiming that his compensable right shoulder injury (the subject of another CCH) caused an overuse injury to his left shoulder (accepted by respondent (carrier)), left elbow and left wrist. Claimant requests that we reverse the hearing officer's decision and render a decision in his favor. Carrier urges affirmance.

DECISION

Affirmed.

This case is somewhat confused because claimant also sustained a compensable (as accepted by carrier) right shoulder injury on (Injury date 1), and both that case and this case were heard at the same time. The issue in the companion case was whether claimant's right shoulder injury extended to the right elbow and wrist, while the issue in this case is extension of a left shoulder injury. Although both cases (the extension of a compensable right and left shoulder injury to the elbow and wrist) were heard by this hearing officer at the same time, the hearing officer apparently wrote separate decisions. We would comment that most of the testimony dealt with the right-side injury of (injury date 1), and it is not at all clear what, if anything, occurred on _____, to cause the left side injury.

In any event, claimant testified that he was a house painter and laborer and that, while lifting a heavy box on (injury date 1), he felt a "pop" in his neck and pain in his right shoulder and down his right arm. Claimant reported the injury and sought medical care the following day, underwent conservative treatment and was returned to light work by his then-treating doctor, (Dr. S), apparently sometime in late February 1996. The gist of claimant's contention regarding his left-side injury is that upon returning to light-duty work, the employer assigned him regular duties, including scraping, painting and carrying equipment up and down ladders. Claimant contends that this was not light duty and that because of his right-side injury he had to use his left arm and shoulder, which, in turn, caused a left-side injury. Based on Dr. S's diagnosis of a left shoulder injury (discussed below) carrier accepted liability of a left shoulder injury and the parties stipulated, in this case, that claimant had sustained a compensable left shoulder injury. Claimant subsequently had left shoulder surgery in the form of decompression surgery in October 1996. Claimant in this case contends that the accepted left shoulder injury also extends to the left elbow and

wrist. Claimant testified that he was eventually terminated (when and for what reason was not developed).

We note that carrier offered into evidence 115 pages of unsorted, untabulated medical records beginning in 1982 from a number of doctors. Such a random compilation of records is not very helpful except that they apparently show that claimant has been having some wrist (both), shoulder and back problems for many years. Dr. S's office note of a February 22, 1996, visit does not reference left side complaints. An Initial Medical Report (TWCC-61), dated March 11, 1996, referencing a "03-07-95 [sic, should be 96]" office visit with a _____, date of injury from a (Dr. G) references left arm complaints and diagnoses "Sprains & strains/shoulder & upper arm." We find no other reports from Dr. G. In an office note of March 19, 1996, Dr. S comments that claimant has been "seeing another physician for his left shoulder." A report dated April 16, 1996, from Dr. S references "a new complaint of left shoulder symptoms," which is being considered as a new injury by the "employer and/or insurer." Dr. S attributes the left shoulder complaints to "increased use of the left arm." Dr. S says "this is mainly an overuse problem at this point with a flare up of AC arthritis. . . ." A report of an office visit on July 2, 1996, by Dr. S, notes a follow-up "of his left shoulder problem" based on a "diagnosis of AC arthritis." Subsequent reports refer to both the left and right shoulders, but no reference to a left elbow or wrist condition.

Claimant apparently changed treating doctors to (Dr. B) on March 31, 1997. Although Dr. B notes complaints of left shoulder, left elbow, left forearm and neck pain in an October 22, 1997, report, Dr. B goes on to state that he "can not give an extent of this injury." Basically, Dr. B appears to attribute claimant's shoulder (and arm) pain to a neck injury. Dr. B, in numerous reports, comments on claimant's left shoulder condition, but does not diagnose a specific left elbow or wrist injury.

The Employer's First Report of Injury or Illness (TWCC-1) regarding a left shoulder injury of _____, merely states that claimant "said his left shoulder just started hurting." An Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) dated March 12, 1996, states the "accident" happened "[a]t work - painting - sweeping" and the body part affected was the "[l]eft shoulder." The hearing officer, in the statement of the evidence, commented:

There is no medical complaint or report of the Claimant's left elbow, wrist, forearm, or hand from March 14, 1996 to March 31, 1997. The medical records of [Dr. S], who was treating the Claimant during that time for both the right and the left sides, do not include anything about the left elbow or wrist. The Claimant did not have the supporting or corroborating evidence that he needed to meet his burden of proof.

The hearing officer determined in Finding of Fact No. 5 that "Whatever injury the Claimant may have to his left elbow and left wrist is not the direct or natural result of his injury of _____ to his left shoulder."

We have many times noted that the claimant has the burden of proving an injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation , 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Claimant, in his appeal, merely contends that overuse of the right shoulder caused some unspecified injury to his left elbow and wrist. The Appeals Panel has on several occasions addressed the overuse theory, with perhaps the leading Appeals Panel case being Texas Workers' Compensation Commission Appeal No. 93725, decided September 28, 1993, where the Appeals Panel reversed and rendered a hearing officer's decision that had found compensable an "overuse" injury of the right hand subsequent to a compensable cat bite and infection of the left hand. That opinion said that "overuse" was "too remote" and pointed out that the only manner in which the right hand was related to the injury on the left hand was through overuse. Appeal No. 93725 has been followed relative to questions of overuse, without other factors, of one extremity opposite the compensably injured extremity. Appeal No. 93725 should be distinguished from Texas Workers' Compensation Commission Appeal No. 93414, decided July 5, 1993, which found compensable a back injury caused by an altered gait resulting from a compensable knee injury.

It is noted in this case that there was a complete lack of medical evidence of what, if any, injury there was to the left elbow or wrist and in general how, if at all, the compensable _____, shoulder injury was related to the left elbow and wrist. In the absence of any evidence, medical or otherwise, which would tend to establish that, or how, the stipulated left shoulder injury extended to the left elbow or wrist, or even what that injury might be, we find the hearing officer's decision supported by the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Christopher L. Rhodes
Appeals Judge