

APPEAL NO. 990444

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 28, 1999, a contested case hearing was held. With regard to the issues before her, the hearing officer determined that appellant's (claimant) compensable right shoulder injury of \_\_\_\_\_ (all dates are 1998) does not extend to a left shoulder impingement syndrome.

Claimant appeals, contending that the great weight of evidence is contrary to the hearing officer's decision, and requests that we reverse that decision and render a decision in her favor. Respondent (carrier) urges affirmance.

DECISION

Affirmed.

Claimant was employed as an "assembler" for (employer). Claimant testified that on \_\_\_\_\_ she was working on a "dysfunctional" machine, shrink wrapping Nerf balls, and pulling on some plastic, when she "heard a pop in [her] right arm, shoulder." Carrier accepted liability for, and the parties stipulated that claimant had, a right shoulder injury. Claimant received treatment for the right shoulder injury and was returned to light duty. Claimant testified that she continued working light duty, protecting her injured right shoulder and, around the end of February or the first of March, began to develop pain in her left shoulder due to overuse. Claimant testified that she notified the company nurse that she had left shoulder pain around March 1st. Claimant was taken off work by Dr. N on March 5th.

In a report of a February 25th visit, Dr. W refers only to the right shoulder injury. Claimant was referred to Dr. Z, who, in a February 26th report, refers only to the neck and right shoulder injury. Dr. N, in a report of visits on March 4th, 17th and 31st, refers to a right shoulder impingement syndrome and cervical strain. In a report of an April 7th visit, Dr. N, for the first time, states, "[claimant] indicates her left shoulder is now hurting since she cannot use her right shoulder." Dr. N goes on to state, "[claimant] was advised to have the left shoulder approved as part of her injury treatment." Claimant continued to receive treatment for her right shoulder injury without reference to the left shoulder until October 16th, when Dr. N makes a specific diagnosis of "impingement syndrome left shoulder due to repetitive trauma resulting from the injured right upper extremity." As the hearing officer notes, neither claimant nor Dr. N give any specifics as to what traumatic activities caused claimant's left shoulder problems. Dr. N goes on to opine:

The patient has been under evaluation and treatment for right upper extremity injuries due to repetitive trauma as the result of work-related activities reported on \_\_\_\_\_. The patient has been unable to use her right upper extremity and she must use her left upper upper [sic] extremity exclusively for most activities of daily living. As a result she has developed

similar repetitive symptoms in the left upper extremity. Consequently, the left upper extremity symptoms are the direct result of the injury to the right upper extremity and should be considered part of her workers' compensation claim.

(Parenthetically, we would note that Dr. N, and some other doctors, make reference to a repetitive trauma right shoulder injury when, in fact, claimant testified that she sustained a specific discreet right shoulder injury on \_\_\_\_\_.)

In a report of an October 23rd visit, Dr. N makes no mention of the left shoulder injury, but, in a report of a December 4th visit, Dr. N releases claimant to limited-type work "after treatment of left upper extremity." In that report, Dr. N writes:

The patient was advised I believe the left shoulder symptoms are the result of her having to use her left arm during the time her right arm was recovering following her work-related injury. She is now left with residual left shoulder bursitis.

In a report dated December 17th, Dr. N writes:

1) I have no way of determining whether an injury is due to repetitive trauma or overuse. They are essentially the same, in that repetitive activities, which cause pain, are in fact overuse of that body part. Unless there is a specific injury definition by Statute, I am not clear on what the true difference is between the two terms.

2) With regard to the left upper extremity, it appears that the patient had to use her nondominant left upper extremity for activities of daily living to compensate for inability to use her right upper extremity, which was impaired due to the compensable work-related injury of \_\_\_\_\_. There does not appear to be any other event precipitating onset of symptoms to the left upper extremity other than the fact that she had to use it more often following incapacitation of the right upper extremity. I have no problem in the one-month time frame during which that insult of the left upper extremity could have developed.

The hearing officer, in her Statement of the Evidence, remarks:

The Claimant also has the burden of proving that the claimed injury was caused by or was the naturally flowing effect of the compensable injury. The Claimant is required to establish a causal connection between the original right shoulder injury and her diagnosed left shoulder bursitis and impingement syndrome. Based on the evidence presented, the Claimant may have sustained an injury to her left shoulder as a result of the repetitive nature of her employment [*i.e.*, apparently meaning a new repetitive trauma injury], however, the Claimant's testimony and medical evidence is

insufficient to prove by a preponderance of the evidence that any "overuse" of her left shoulder due to the compensable right shoulder injury was a naturally flowing effect of her right shoulder injury or directly caused by her compensable injury of \_\_\_\_\_.

We have addressed the "overuse" issue a number of times, beginning with Texas Workers' Compensation Commission Appeal No. 93725, decided September 28, 1993, a case where the injured employee sustained a left carpal tunnel syndrome (CTS) injury from a cat bite and contended that that resulted in an overuse CTS injury to her right hand. The question was addressed whether the right hand problems "naturally flowed" from the original injury. A majority found that the compensable injury (left hand CTS) did not "extend" to the right 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.

Given the Appeals Panel precedent that, generally, overuse in one extremity opposite the compensable injured extremity is not compensable and the limited nature of claimant's appeal citing any authority to the contrary, we affirm the hearing officer's decision as not being 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).

The hearing officer's decision and order are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Tommy W. Lueders  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge