

APPEAL NO. 002037

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 August 15, 2000. The issue at the CCH was whether the compensable injury extended to and included the appellant's (claimant) right shoulder. The hearing officer determined that it did not. The claimant appealed the hearing officer's determination. The respondent (carrier) responds that the hearing officer's decision is supported by the evidence and should be affirmed.

DECISION

Affirmed.

The claimant sustained compensable right carpal tunnel and right lateral epicondylitis injuries on _____. She had a right carpal tunnel release on January 4, 1999, and a right elbow lateral epicondylar release on March 29, 1999. The claimant testified that after the carpal tunnel release in January 1999 she immediately began to experience problems with the wrist and that she began experiencing shoulder problems approximately two weeks after she underwent the epicondylar release in March 1999. The claimant testified that she has discussed her continuing problems with Dr. E, the surgeon who performed both surgeries, and that he explained that the pain, which now extends to the right shoulder blade, is an extension of the carpal tunnel syndrome (CTS).

The claimant did not offer any medical evidence to support her theory that the CTS is traveling in a progressive manner from the nerve endings in the right thumb through her arm and is destined to eventually result in nerve damage at the spine. In fact, although the claimant testified that she did not experience any problems in the shoulder until two weeks after the March 29, 1999, elbow surgery, there was no medical evidence of any kind offered by either party after the surgical report for the March 29, 1999, epicondylar release.

The claimant postulated in her closing argument that the nerves to the thumb extend through the arm to the shoulder, and thence to the spine, and therefore it is reasonable to believe that a condition which affects the nerves of the thumb would, in a natural progression, affect the nerves of the wrist, the elbow, the shoulder, the shoulder blade, and, ultimately, the nerve root at the spine. Such a progression, if possible at all, is certainly outside the realm of common experience and common knowledge. Since the causal connection between the _____, CTS; the January 4, 1999, CTS surgery; the March 29, 1999, epicondylar surgery; and the shoulder and scapular pain complained of by the claimant in this case is not such that it can be determined through common knowledge, expert medical evidence was required to establish that nexus. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). No expert evidence was presented to support the claimant's theory of recovery, resulting in a fatal deficiency in the evidence presented.

The need for expert medical evidence assumes, for the sake of argument, that the trier of fact is persuaded that the pain reported by the claimant is a harbinger of damage or harm to the structure of the claimant's body. In light of the paucity of the evidence available for review in this matter, we find that the hearing officer's determination that the claimant did not sustain an injury to her right shoulder in the course and scope of her employment on _____, is not so against the great weight and preponderance of the evidence as to be 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). We therefore decline to reverse the hearing officer's determinations in this matter.

The decision and order are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge