

APPEAL NO. 022949
FILED JANUARY 7, 2003

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 October 28, 2002. The hearing officer determined that the appellant's (claimant) compensable injury of _____, extended to his right scapular and trapezius, but not to his right shoulder. The claimant appeals and argues that this determination is against the great weight and preponderance of the evidence. There is no response from the respondent (carrier).

DECISION

We reverse and render a decision that the claimant's injury extended to his right shoulder.

The claimant is Spanish-speaking. The injury occurred when he picked up a 35-40 pound trash bag with his right arm while working as a custodian for the employer on _____. The claimant said he had shoulder symptoms from the onset of the injury, which he reported to his supervisor. Within a month to six weeks of the injury, medical reports documented right shoulder pain along with cervical and lumbar problems, and recorded a diagnosis of shoulder tendonitis. The claimant returned to work briefly at the beginning of October 2001 but had to leave work because of his right shoulder pain.

The decision in the case may illustrate the difficulty of referring to injured regions of the body by commonly-understood names, when underlying medical documents may refer to specific muscles or bones underlying those regions.

The medical records indicating treatment for the injured areas record complaints and problems with the right "shoulder" along with more precise medical references to the trapezius muscle and scapular area. The hearing officer gives no insight into why he determined that the mechanism of injury was consistent with injury to part, but not all, of the shoulder region. There is medical opinion that the accepted cervical injury could also cause pain into the shoulder area. The required medical examination doctor, after stating that a right "shoulder" injury was plausible given the mechanism of the accident, stated that the claimant should have pain injections into the shoulder and if this did not help, arthroscopic examination should be pursued.

Against this was the carrier's apparent contention that the nature of the injury was fixed by the claimant's accident report on the day of injury, or that he was treated only for "pain" in his shoulder rather than any specific injury. The claimant said that he was not able to write with his right hand when he gave his report of the accident so someone in the employer's office assisted him. There was no evidence offered of a preexisting shoulder injury or of an intervening injury after the trash bag incident.

In this case, the hearing officer agreed that injury was demonstrated to extend to the right scapular area and the right trapezius. Both this bone and muscle abut into the shoulder joint itself (there are numerous documents in evidence along with body diagrams showing that the claimant complained of pain from the top of his right shoulder down through his right shoulder blade). We would caution that while chronology alone does not establish a causal connection between an accident and a later-diagnosed injury (Texas Workers' Compensation Commission Appeal No. 94231, decided April 8, 1994), neither does a delayed manifestation nor the failure to immediately mention an injury to a health care provider necessarily rule out a connection. See Texas Employers Insurance Company v. Stephenson, 496 S.W.2d 184 (Tex. Civ. App.-Amarillo 1973, no writ). Generally, lay testimony establishing a sequence of events which provides a strong, logically traceable connection between the event and the condition is sufficient proof of causation. Morgan v. Compugraphic Corp., 675 S.W.2d 729, 733 (Tex. 1984).

Given the testimony, the medical records, and the fact that the hearing officer agreed that the injury extended into what would be commonly understood as the shoulder region (apparently rejecting the carrier's contention that the nature of the injury was fixed by what was first reported on his day of injury), we agree that it was against the great weight and preponderance of the evidence for the hearing officer to bifurcate the shoulder region in a manner not supported by the medical records. We therefore reverse the determination that the claimant's injury did not extend to his right shoulder, and render a decision that the claimant's injury extended to his "right shoulder."

The true corporate name of the insurance carrier is **LM INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge