

APPEAL NO. 042071
FILED OCTOBER 13, 2004

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 July 27, 2004. The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) compensable injury of _____, does not include an injury to the claimant's right shoulder in the form of a rotator cuff tear and thickening of the supraspinatus tendon, but that the compensable injury of _____, does include an injury to the claimant's right shoulder in the form of an impingement syndrome. The appellant (carrier) appeals, contending that the claimant failed to establish that her compensable injury extends to include impingement syndrome of her right shoulder. The claimant asserts that sufficient evidence supports the appealed determination. There is no appeal of the hearing officer's determination that the claimant's compensable injury does not include an injury to the claimant's right shoulder in the form of a rotator cuff tear and thickening of the supraspinatus tendon.

DECISION

Affirmed as reformed herein.

In Finding of Fact No. 4 the hearing officer found that during the course and scope of her employment the claimant did not injure nor cause physical damage to her right shoulder that resulted in a rotator cuff tear or thickening of the supraspinatus tendon. In Finding of Fact No. 5 the hearing officer found that during the course and scope of her employment the claimant caused physical damage to her right shoulder *that resulted in an impingement syndrome*. In Conclusion of Law No. 3 the hearing officer concluded that the compensable injury of _____, does *not* include an injury to the claimant's right shoulder in the form of a rotator cuff tear or thickening of the supraspinatus tendon, *and impingement syndrome*. In Conclusion of Law No. 4 the hearing officer concluded that the compensable injury of _____, does include an injury to the claimant's right shoulder *in the form of an impingement syndrome*. In the Decision section of the Decision and Order, the hearing officer decided that the compensable injury of _____, does not include an injury to the claimant's right shoulder in the form of a rotator cuff tear and thickening of the supraspinatus tendon, but that the compensable injury of _____, *does include an injury to the claimant's right shoulder in the form of an impingement syndrome*. Based on the hearing officer's Findings of Fact Nos. 4 and 5; Conclusion of Law No. 4; and the Decision section of her Decision and Order, we believe that the hearing officer made a clerical error in Conclusion of Law No. 3 wherein she concluded in part that the compensable injury does not include impingement syndrome of the right shoulder. It is clear from the hearing officer's findings of fact and decision that she determined that the compensable injury includes impingement syndrome of the right shoulder. Consequently, we reform Conclusion of Law No. 3 to strike the words "and impingement syndrome."

The parties stipulated that the claimant sustained a compensable injury on _____. The medical evidence reflects that the claim is for a repetitive trauma injury. Whether the compensable injury includes impingement syndrome of the right shoulder was a fact issue for the hearing officer to resolve from the evidence presented at the CCH, which apparently included a demonstration by the claimant of motions made while performing work activities. There is a letter of causation in evidence from the treating doctor which supports the hearing officer's determination regarding the impingement syndrome. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision that the compensable injury includes impingement syndrome of the right shoulder is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

As reformed herein, we affirm the hearing officer's decision and order.

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

**PARKER W. RUSH
1445 ROSS AVENUE, SUITE 4200
DALLAS, TEXAS 75202-2812.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Veronica L. Ruberto
Appeals Judge