

APPEAL NO. 071770
FILED NOVEMBER 19, 2007

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, 2007. The two issues before the hearing officer were:

- (1) Does the compensable injury of _____ extend to include the findings and impressions of the MRI of the right shoulder dated September 20, 2004, the findings and impressions of the MRI of the left shoulder dated September 20, 2004, the findings and impressions of the MRI of the left wrist dated September 21, 2004, the findings and impressions of the MRI of the right wrist dated September 21, 2004, the findings and impressions of the MRI of the left elbow dated September 21, 2004, and the findings and impressions of an MRI of the right elbow dated September 21, 2004?
- (2) Has the respondent (self-insured) waived compensability of the "findings and impressions" of the MRIs of the bilateral shoulders, bilateral wrists, and bilateral elbows as set out in the first issue, by not timely contesting compensability in accordance with Section 409.021?

With regard to the first issue, the hearing officer determined that the appellant's (claimant) _____, injury does not include the "findings and impressions" of the MRIs of the shoulders other than the mild supraspinatus tendonosis/tendonopathy of the left shoulder and of the MRIs of the elbows and wrists, other than the small anterior and posterior fat pad with joint effusions of the left elbow. With regard to the second issue, the hearing officer determined that the self-insured did not waive the right to dispute whether the _____, injury extended to the "impressions and findings" of the September 20, 2004, MRIs of the shoulders and to the "impressions and findings" of the September 21, 2004, MRIs of the elbows and wrists. The hearing officer's determinations that the compensable injury extends to the mild supraspinatus tendonosis/tendonopathy of the left shoulder and the small anterior and posterior fat pad with joint effusions of the left elbow have not been appealed and have become final.

The claimant appeals the other determinations regarding the extent of injury and carrier waiver of MRI impressions and findings of the bilateral shoulders, bilateral wrists, and bilateral elbows as being against the great weight and preponderance of the evidence. The self-insured responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on _____. A prior CCH in October 2005, involved disputed issues of whether the compensable injury of _____, extended to the cervical spine and whether the self-insured had waived the right to dispute compensability of the cervical spine. In Appeals Panel Decision (APD) 052689, decided January 27, 2006, the Appeals Panel rendered a decision that the self-insured had waived the right to dispute compensability of the alleged cervical spine injury and the cervical spine injury became compensable as a matter of law. The CCH in that case also established that the self-insured first received written notice of the _____, injury on August 25, 2004. The parties agree that the 60-day waiver period ended on October 23, 2004.

WAIVER

Section 409.021 provides that for claims based on a compensable injury that occurred on or after September 1, 2003, that no later than the 15th day after the date on which an insurance carrier receives written notice of an injury, the insurance carrier shall: (1) begin the payment of benefits as required by the 1989 Act; or (2) notify the Texas Department of Insurance, Division of Workers' Compensation and the employee in writing of its refusal to pay. Section 409.021(c) provides that if an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability. 28 TEX. ADMIN. CODE § 124.3(e) (Rule 124.3(e)) provides that Section 409.021 does not apply to disputes of extent of injury. In APD 041738-s, decided September 8, 2004, the Appeals Panel established that when a carrier does not timely dispute the compensability of an injury, the compensable injury is defined by the information that could have been reasonably discovered by the carrier's investigation prior to the expiration of the waiver period.

The self-insured filed a Notice of Disputed Issue(s) and Refusal to Pay Benefits (PLN-11) dated September 13, 2004, on September 14, 2004. The reason for disputing compensability was:

Self-insured denies any and all liability and/or disability for both shoulder impingement syndrome, both wrist sprain/strain, both elbow sprain/strain and nerve entrapment as these are not related to the injury of 8/12/04 which was chest pain. There is no medical documentation or diagnostic testing indicating disability as related to the compensable injury.

On September 20, 2004, claimant had a left shoulder MRI which had the following pertinent findings and impressions:

Minimal to mild acromio-clavicular arthropathic changes with likely some impingement in the neutral position.
Likely mild supraspinatus tendonosis/tendonopathy [finding as part of the extent-of-injury issue which was not appealed] with no evidence of full thickness tear or muscles retraction. No evidence of labral tear.

A September 20, 2004, MRI of the right shoulder had a pertinent impression of:

Acromio-clavicular arthropathic changes with likely some impingement in the neutral position. Supraspinatus tendonosis/tendonopathy with no evidence of full thickness tear or muscle retraction.

A September 21, 2004, MRI of the right elbow had an impression of:

Significant anterior and posterior fat pad with joint effusions, non-specific T2 high signal changes in the predominantly lateral humeral condyle and adjacent radial head with differential including non-specific edema, contusion, microfracture with macrofracture cannot be completely excluded.

A September 21, 2004, MRI of the left elbow had an impression of:

Non-specific, small anterior and posterior fat pad with joint effusion [finding as part of the extent-of-injury issue which was not appealed].

A September 21, 2004, MRI of the right wrist had a finding of:

Subtle linear T1 low signals in the mid lunate noted without definite evidence of significant corresponding T2 high signal changes of uncertain etiology (T1 coronal image # 129-132) not as well appreciated on the sagittal and axial images with differential including related to vascular/nutrient channel, prior traumatic in origin without significant non-specific edema or contusion.

A September 21, 2004, MRI of the left wrist had impressions of:

Findings raise a possibility for non-specific bone marrow edema or contusion at the base of the first carpo-metacarpal level/trapezoid with very small effusions. Otherwise, no evidence of acute displaced or deformed fracture or dislocation.

Questionable, possible mild strain in the ulnar aspect of the triangular fibro-cartilage complex with no definite evidence of tear.

Joint effusions at the radiocarpal level along the lunate and medial aspect of the wrist including non-specific - 1.3 cm focal T2 high signal fluid area medially along the wrist carpals.

We note that the extent and waiver issues were specifically framed to apply to the “findings and impressions” of the various MRIs. As in APD 052689, *supra*, the issue becomes whether the quoted language in the PLN-11, dated September 13, 2004, is sufficient to dispute the “findings and impressions” of the MRIs performed on September 20 and 21, 2004.

The self-insured contends that its PLN-11, dated September 13, 2004, extended to impingement of the shoulders and it “has accepted by virtue of the Hearing Officer’s decision” the left shoulder mild tendonosis diagnosis. Otherwise the self-insured contends that its dispute of wrist and elbow sprain/strain covers such “descriptive words of contusion, effusion, edema and strain.” The self-insured contends that there was no requirement to further contest the same body parts based on later diagnostic tests. The hearing officer, in his Background Information, comments that read in context of the medical reports at the time, the self-insured’s September 13, 2004, PLN-11 was sufficient to dispute that the injury extended to the shoulders, elbows, and wrists. The hearing officer further comments:

Under these circumstances, where the [self-insured] has timely disputed that the injury extends to certain body parts and before there are diagnostic tests, the hearing officer does not believe that the “waiver” doctrine has been construed to require the [self-insured] to file a further contest of compensability to unspecified “impressions and findings” of later diagnostic tests to the disputed body parts where the tests were performed within the sixty day “waiver” window.

In this case, the MRIs were ordered by the treating doctor, were clearly performed, and were discoverable during the 60-day waiver period. A second dispute filed on January 13, 2005, was well outside the waiver period. The language used in the dispute, in this case the PLN-11 dated September 13, 2004, must be carefully examined to determine what injury/diagnoses the self-insured is specifically disputing as being non-compensable. In APD 052689, *supra*, it was determined that the PLN-11 dated September 13, 2004, was insufficient to dispute a cervical injury. The PLN-11 dated September 13, 2004, was sufficient to dispute the “possible mild strain in the ulnar aspect” of the left wrist. The self-insured, in its PLN-11, dated September 13, 2004, also disputed bilateral shoulder impingement syndrome. Insofar as the September 20, 2004, bilateral shoulder MRIs showing some acromio-clavicular arthropathic changes “with likely some impingement in the neutral position” can be read to be a “shoulder impingement syndrome” the self-insured did not waive the right to dispute bilateral shoulder impingement in the neutral position.

Medical records existed within the waiver period, which revealed that the claimant had been diagnosed with having sustained injuries to her bilateral shoulders, bilateral elbows, and bilateral wrists and the self-insured through a reasonable investigation could have discovered the MRI findings within the waiver period. The self-insured denied liability for bilateral shoulder impingement syndrome, bilateral wrist sprain/strain, and bilateral elbow sprain/strain and nerve entrapment but failed to deny other specific conditions of the MRI findings and impressions either by denying those conditions or by limiting the injury to the chest pain it was accepting. There is no evidence that the supraspinatus tendonosis/tendonopathy with no evidence of full thickness tear or muscle retraction of the right shoulder equates to a right shoulder impingement syndrome. There is no evidence that the joint effusions and conditions

listed in the September 21, 2004, MRI of the right elbow equates to a right elbow sprain/strain. The only bilateral wrist condition disputed in the September 13, 2004, PLN-11 was a bilateral wrist sprain/strain. That dispute was sufficient to dispute the possible mild strain in the ulnar aspect of the triangular fibro-cartilage complex (mild strain of the ulnar aspect) of the left wrist. There is no evidence that the other MRI findings of the bilateral wrists (except for the mild strain of the ulnar aspect of the left wrist) were other descriptive words for a bilateral wrist sprain/strain. As noted, the September 13, 2004, PLN-11 filed by the self-insured does not contain any words of limitations for the only condition it accepted, which was chest pain. See APD 060701-s decided May 23, 2006.

Accordingly, we reverse the hearing determination that the self-insured did not waive the right to dispute compensability of the "impressions and findings" of the September 20, 2004, MRI of the shoulders and the "impressions and findings" of the September 21, 2004, MRIs of the elbows and wrists. We render a new decision that the self-insured has waived its right to dispute compensability of the findings and impressions of the September 20, 2004, MRI of the shoulders, except for bilateral shoulder impingement in the neutral position and the findings and impressions of the September 21, 2004, MRIs of the wrists and elbows except for the mild strain of the ulnar aspect of the left wrist.

EXTENT OF INJURY

Because we have reversed the hearing officer's determination on waiver of the findings and impressions of the September 20, 2004, MRIs of the shoulders (except for the bilateral shoulder impingement in the neutral position) and the findings and impressions of the September 21, 2004, MRIs for the elbows and wrists (except mild strain of the ulnar aspect of the left wrist), those conditions have become compensable as a matter of law. Therefore, the hearing officer's determination that the claimant's _____, injury does not include the "findings and impressions" of the September 20, 2004, MRIs of the shoulders other than the mild supraspinatus tendonitis/tendonopathy of the left shoulder (which was not appealed) and of the September 21, 2004, MRIs of the elbows and wrists other than the small anterior and posterior fat pad with joint effusions of the left elbow (which was not appealed) is reversed and a new decision is rendered that the claimant's compensable _____, injury does include the appealed findings and impressions of the September 20, 2004, MRIs of the shoulders, except for bilateral shoulder impingement in the neutral position, and the appealed findings and impressions of the September 21, 2004, MRIs of the elbows and wrists except for the mild strain of the ulnar aspect of the left wrist. We affirm the hearing officer's determination that the compensable injury does not extend to include bilateral shoulder impingement and a mild strain of the ulnar aspect of the left wrist.

The true corporate name of the insurance carrier is (a **self-insured governmental entity**) and the name and address of its registered agent for service of process is

**MF
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge