

APPEAL NO. 081475  
FILED DECEMBER 2, 2008

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 September 3, 2008. The issues before the hearing officer were:

1. Did the appellant (claimant) sustain a compensable injury on \_\_\_\_\_?
2. Does the claimant have disability resulting from an injury sustained on \_\_\_\_\_, from August 10, 2007, through April 27, 2008?
3. Is the claimant barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under a group health insurance policy?

The hearing officer determined that: (1) the claimant did not sustain a compensable injury on \_\_\_\_\_; (2) because the claimant did not sustain a compensable injury, the claimant did not have disability; and (3) the claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under a group health insurance policy.

The claimant appeals the hearing officer's determinations on compensability and disability. The respondent (carrier) responds, urging affirmance.

The hearing officer's determination that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under a group health insurance policy has not been appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The claimant testified that he sustained a repetitive trauma injury to his right hand due to his repetitive duties at work as an electrician. The claimant testified that he had sharp pains to his right hand prior to \_\_\_\_\_, the date that he noticed that his right hand became numb and his fingers swollen from cutting wires with his hands at work. A medical report dated \_\_\_\_\_, shows that the claimant complained of swelling to his right index finger and that he remembered that his symptoms began two weeks ago but did not "recall any injury to finger." The claimant was referred to an orthopedic surgeon. In a medical report dated March 29, 2007, Dr. G, an orthopedic surgeon, diagnosed the claimant with right hand tendonitis and prescribed medication. In a medical note dated May 1, 2007, Dr. G referred the claimant to Dr. Bo, a hand

specialist, to evaluate the claimant's right hand tendonitis because the claimant continued to have pain to his right hand. In a medical report dated May 15, 2007, Dr. Bo diagnosed the claimant with right carpal tunnel syndrome (CTS) and "PIP and MCP joint sprain." An EMG dated June 27, 2007, shows an impression of "[m]oderately severe right [CTS]," "[j]oint abnormalities in the right hand," and "[s]oft, fairly diffuse, mass of the right volar wrist." Dr. Bo referred the claimant to Dr. Bu, another hand specialist, for a second opinion. In a medical report dated July 3, 2007, Dr. Bu diagnosed the claimant with CTS secondary to flexor tenosynovitis. An operative report dated October 12, 2007, shows that the claimant underwent "right open carpal tunnel release."

The Texas Department of Insurance, Division of Workers' Compensation appointed, Dr. M, as a designated doctor to determine: (1) the extent of the claimant's compensable injury; (2) whether the claimant's disability is a direct result of the work related injury; and (3) whether there "is the harm to [the] physical structure of the body from the claimant's job." Dr. M's narrative report dated February 12, 2008, states that in his opinion "the tenosynovitis and [CTS] were in fact related to his employment and employment only."

The hearing officer states in the Background Information section of her decision that the "[c]laimant's repetitive job duties of cutting wire may be the cause of his injuries, but no medical report was in evidence to support any causation theory." The hearing officer found that: (1) the designated doctor, Dr. M, opined that the claimant's injuries consisting of [CTS] and tenosynovitis are related to his employment; and (2) Dr. M's report is not supported by the preponderance of the evidence, "since no medical report was in evidence to show how an incident on \_\_\_\_\_ caused the injuries." The hearing officer erred in not giving presumptive weight to the designated doctor's report pursuant to Section 408.0041.

Section 408.0041(e) provides that the report of the designated doctor has presumptive weight unless the preponderance of the evidence is to the contrary. In this case, the purpose of the designated doctor's examination was to determine, among other things, whether there was "harm to [the] physical structure of the body from the claimant's job." The designated doctor opined that the claimant's CTS and tenosynovitis are related to the claimant's employment. There are no other medical reports in evidence contrary to the designated doctor's report showing that the claimant's injuries are not related to his employment. Additionally, there is no evidence that the claimed injuries are not related to the claimant's employment. The hearing officer's determination that the claimant did not sustain a compensable injury on \_\_\_\_\_, is against the great weight and preponderance of the evidence. Accordingly, we reverse the hearing officer's determination that the claimant did not sustain a compensable injury on \_\_\_\_\_, and we render a new decision that the claimant sustained a compensable injury on \_\_\_\_\_.

The hearing officer found that the claimed injury was a cause of the claimant's inability to obtain or retain employment at wages equivalent to the claimant's preinjury

wage beginning August 10, 2007, and continuing through April 27, 2008. However, the hearing officer determined that the claimant did not have disability because the claimant did not have a compensable injury. The hearing officer states in the Background Information section of her decision, that if the claim were compensable then the report of the designated doctor, Dr. M, dated February 12, 2008, supports the claimed period of disability. Given that we have reversed the hearing officer's compensability determination and we have rendered a new decision that the claimant sustained a compensable injury on \_\_\_\_\_, we likewise reverse the hearing officer's disability determination. We reverse the hearing officer's determination that because the claimant did not sustain a compensable injury, the claimant did not have disability and we render a new decision that the claimant had disability resulting from an injury sustained on \_\_\_\_\_, from August 10, 2007, through April 27, 2008.

### **SUMMARY**

We reverse the hearing officer's determination that the claimant did not sustain a compensable injury on \_\_\_\_\_, and we render a new decision that the claimant sustained a compensable injury on \_\_\_\_\_. We reverse the hearing officer's determination that because the claimant did not sustain a compensable injury, the claimant did not have disability and we render a new decision that the claimant had disability resulting from an injury sustained on \_\_\_\_\_, from August 10, 2007, through April 27, 2008.

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

**LEO F. MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge