

APPEAL NO. 100526
FILED JUNE 23, 2010

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 April 5, 2010. The issues listed in the benefit review conference report, announced by the hearing officer at the CCH, and agreed upon by the parties were:

1. Does the compensable injury of _____, extend to include the right shoulder acromioclavicular tendinopathy, right shoulder rotator cuff tendinopathy, and cervical spine disc protrusions/herniations at C5-6 and C6-7?
2. Did the [appellant/cross-respondent (claimant)] have disability resulting from the compensable injury from July 14, 2009, through the present?

The hearing officer determined that: the compensable injury of _____, includes "right shoulder rotator cuff tendinopathy"; the compensable injury of _____, does not include "right shoulder acromioclavicular tendinopathy" and cervical spine disc protrusions/herniations at C5-6 and C6-7; and that the claimant sustained disability beginning on July 14, 2009, and continuing through the date of the CCH.

The claimant appeals the determinations unfavorable to her and notes that the right shoulder was never at issue and the hearing officer erroneously states that a box "hit her right shoulder but it is the left shoulder that was injured." The respondent/cross-appellant (self-insured), in its response and cross-appeal, "agrees that the right shoulder was not involved in this case." The self-insured appeals the determination that the compensable injury extends to "right shoulder rotator cuff tendinopathy" and that the claimant had disability beginning on July 14, 2009, and continuing through the date of the CCH. The claimant responds to the self-insured's appeal, urging affirmance on the cross-appealed determinations.

DECISION

Affirmed in part and reversed and rendered in part.

DISABILITY

The hearing officer's determination that the claimant sustained disability beginning on July 14, 2009, and continuing through the date of the CCH is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of _____, does not include cervical spine disc protrusions/herniations at C5-6 and C6-7 is supported by sufficient evidence and is affirmed.

Although the hearing officer's decision states that the parties stipulated to diagnoses of "right shoulder" acromioclavicular tendinopathy and "right shoulder" rotator cuff tendinopathy, a review of the record reflects that the parties stipulated to the "claimed" conditions. Throughout the Background Information, Findings of Fact, Conclusions of Law, and Decision, the hearing officer refers only to a right shoulder injury.

The testimony, the claimant's notice to the self-insured, diagnostic testing and most medical records refer to a left shoulder injury. Some medical records only refer to "a" or "the" shoulder injury without specifying right or left. At the CCH, a left shoulder injury was litigated. The Texas Department of Insurance, Division of Workers' Compensation appointed (Dr. K), as the designated doctor, to determine extent of injury. The hearing officer clearly relies on the designated doctor's report which references a left shoulder injury and not a right shoulder injury. The parties on appeal agree that the right shoulder was not involved or at issue and it was the left shoulder that was injured.

Accordingly, we reverse those determinations that refer to the right shoulder as being against the great weight and preponderance of the evidence. We render a new decision by substituting the word "left" in referring to a shoulder injury or condition. Specifically, we render a new decision that the compensable injury includes left shoulder rotator cuff tendinopathy but does not include left shoulder acromioclavicular tendinopathy.

SUMMARY

We affirm the hearing officer's determinations that the compensable injury does not include cervical spine disc protrusions/herniations at C5-6 and C6-7 and that the claimant sustained disability beginning on July 14, 2009, and continuing through the date of the CCH.

We reverse the hearing officer's determinations that the compensable injury includes right shoulder rotator cuff tendinopathy but does not include right shoulder acromioclavicular tendinopathy. We render a new decision that the compensable injury includes left shoulder rotator cuff tendinopathy but does not include left shoulder acromioclavicular tendinopathy.

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

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge