

APPEAL NO. 100855
FILED SEPTEMBER 2, 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 May 17, 2010. The disputed issues were: (1) Did the respondent (claimant) sustain a compensable injury on _____; and (2) Did the claimant have disability resulting from an injury sustained on _____, for the period of July 27, 2007, through November 1, 2007. The hearing officer determined that the claimant sustained a compensable injury on _____, and that the claimant did not have disability resulting from the 2007 compensable injury.

The appellant (carrier) appealed, contending that the claimant had not sustained a new compensable injury in 2007, and that the hearing officer improperly added an extent-of-injury issue for a 2005 compensable injury. The file does not contain a response from the claimant.

The hearing officer's determination that the claimant did not have disability as a result of the 2007 compensable injury has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

BACKGROUND INFORMATION

The claimant testified that he was a boilermaker. The claimant's testimony and medical records establish that the claimant had a long history of left shoulder separations/dislocations dating back to a 1994 football injury. The evidence established that the claimant had a compensable left shoulder dislocation on (2005 compensable injury), which was treated by a closed reduction under anesthesia. A radiological examination performed on October 14, 2005, had an impression of "[a]nterior dislocation, left glenohumeral joint." The claimant continued to have minor shoulder dislocations after the 2005 compensable injury and surgery for the shoulder instability was discussed.

The claimant testified that on _____, he was working in an awkward position and in reaching back his arm twisted and his left shoulder dislocated again. The left shoulder was again put back in place with a closed reduction procedure. The claimant continued to experience left shoulder instability and subsequently experienced another shoulder separation during physical therapy.

On July 26, 2007, the claimant had surgery in the form of an arthroscopic instability repair and arthroscopic SLAP tear repair. The preoperative and postoperative

diagnoses were: “Left shoulder recurrent dislocation with Bankart lesion. SLAP (superior labrum anterior to posterior) tear.” The claimant testified that since the surgery he has not had any further difficulties with his left shoulder.

(Dr. K) was a designated doctor appointed in 2008 to give an opinion on the extent of injury for the 2005 compensable injury. In a report dated July 30, 2008, Dr. K opined that the anterior dislocations of 2005 and 2007 were work-related. In an addendum dated October 29, 2008, after being given additional history of the claimant’s long standing left shoulder problems, Dr. K opined that the 2005 compensable injury does not extend to recurrent anterior dislocations occurring after (2005 compensable injury). (Dr. A), the treating surgeon in several reports comments regarding the _____ 2007 injury that the claimant “sustained a left shoulder anterior dislocation while at work.”

The hearing officer in the Background Information section of his decision, in evaluating the evidence, comments that the October 2005 MRI showed a Bankart lesion involving the anterior inferior glenoid labrum. The hearing officer noted that the July 2007 operative report mentions the Bankart lesion and the SLAP tear, which is not mentioned in the 2005 MRI.

COMPENSABLE INJURY

The hearing officer’s determination that the claimant sustained a compensable injury as defined in Sections 401.011(10) and 401.011(26) on _____, is supported by sufficient evidence and is affirmed.

THE BANKART AND SLAP LESIONS

The hearing officer made an appealed finding of fact that “[t]he Bankhart [sic Bankart] lesion and the SLAP lesion were related to the 2005 compensable injury.” The issues before the hearing officer were whether the claimant sustained a compensable injury on _____, and whether the claimant had disability resulting from an injury on _____. Disability is defined in Section 401.011(16) as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage. Since disability was a disputed issue, the hearing officer had to ascertain the nature of the claimant’s compensable injury in order to be able to determine whether the claimant was unable to obtain and retain employment because of the compensable injury. Appeals Panel Decision (APD) 050005, decided February 16, 2005; APD 031790, decided August 28, 2003. The hearing officer found that the period of disability at issue is directly related to the surgery performed on July 26, 2007, and recuperation time therefrom, to repair the Bankart lesion and SLAP lesion. The hearing officer did not err in deciding that the Bankart lesion and SLAP lesion were the cause of the claimant’s inability to obtain and retain employment at his pre-injury wages.

However, the hearing officer erred in finding that the Bankart lesion and SLAP lesion “were related to the 2005 compensable injury.” The extent of the 2005

compensable injury was not an issue before the hearing officer. It was sufficient for the hearing officer to find that the Bankart lesion and SLAP lesion were not related to the 2007 injury. The hearing officer exceeded the scope of the issues before him in finding the Bankart lesion and SLAP lesion were related to the 2005 compensable injury. Accordingly, we reverse the hearing officer's finding that the Bankart lesion and SLAP lesion were related to the 2005 compensable injury and render a new decision by striking the hearing officer's Finding of Fact No. 5 that the Bankart lesion and the SLAP lesion were related to the 2005 compensable injury.

SUMMARY

We affirm the hearing officer's determination that the claimant sustained a compensable injury on _____.

We reverse the hearing officer's Finding of Fact. No. 5 that the Bankart lesion and the SLAP lesion were related to the 2005 compensable injury and render a new decision by striking Finding of Fact No. 5 in its entirety.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Carisa Space-Beam
Appeals Judge