

APPEAL NO. 110332  
FILED APRIL 28, 2011

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 February 8, 2011. Regarding the only issue before him, the hearing officer determined that the compensable injury of \_\_\_\_\_, included a "disc herniation and stenosis at C4-5 and C5-6 with ataxia, radiculopathy, spondylosis and spurring."

The appellant (carrier) appealed, contending that there was no evidence regarding some of the conditions and that there was insufficient expert medical evidence to support other of the conditions. The respondent (claimant) responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. The claimant testified that he was a fuel truck driver and that on \_\_\_\_\_, he was attempting to move a heavy manhole-like cover from a tank when he injured his left arm and left shoulder. The claimant was seen by several doctors for low back and left shoulder problems, since resolved, and was referred to (Dr. A) for cervical complaints. In a report dated November 18, 2010, Dr. A, the claimant's treating surgeon, stated that the claimant "has a work-related injury" and described the claimant's moving a manhole cover and feeling excruciating pain. In that report, Dr. A referenced a cervical MRI which was consistent with cervical disc extrusions at C5-6 and C6-7. Dr. A further commented that on June 26, 2009, he had recommended a surgical decompression and stabilization at the C5-6 and C6-7 levels but the "carrier only authorized the C6-7 level." An operative report dated October 1, 2009, referenced a work-related injury and had pre and post-operative diagnoses of herniated disc at C6-7 with cord compression along with cervical spondylotic disease. The claimant underwent an anterior cervical discectomy, fusion and plating at C6-7. A follow-up report dated June 22, 2010, had an assessment of a "[p]revious fusion at C6-7, work related with breakdown and changes at C4-5, 5-6, and 6-7."

(Dr. S), a designated doctor appointed for maximum medical improvement and impairment rating, in a report dated February 23, 2010, diagnosed the claimant with "[c]ervical herniated nucleus pulposus at C5-C6 and C6-C7. Prior surgery at C6-C7." (Dr. W) a carrier peer review doctor, in a report dated October 22, 2010, noted that the claimant had "a preexisting degenerative condition at C4-5, C5-6, and C6-7." Dr. W, in that report, stated that the claimant's "C6-7 disk was torn and herniated because of the injury, aggravating the preexisting degenerated disc at this level." Dr. W also noted that radicular symptoms remain symptomatic, that the claimant is developing ataxia at C4-5 and C5-6, and a serious neurological condition in his neck which requires

decompression, but it was Dr. W's opinion this is "just a culmination of the progression of the preexisting stenosis."

**DISC HERNIATION AND STENOSIS AT C5-6  
WITH ATAXIA, RADICULOPATHY, SPONDYLOSIS,  
SPURRING AND STENOSIS AT C4-5.**

The hearing officer's determination that the claimant's compensable injury of \_\_\_\_\_, includes disc herniation and stenosis at C5-6 with ataxia, radiculopathy, spondylosis, spurring, and disc stenosis at C4-5 is supported by sufficient evidence and is affirmed.

**DISC HERNIATION AT C4-5**

The medical records do not support a diagnosis of a disc herniation at C4-5 (although there is evidence that the claimant has a 3 mm broad-based posterior disc protrusion no medical evidence classifies the disc protrusion as a herniation). Dr. A, the claimant's treating surgeon, in his November 18, 2010, report noted that after the C6-7 fusion the claimant "has breakdown and changes at C4-5, 5-6 and 6-7" but did not characterize that breakdown as a C4-5 disc herniation. An MRI dated May 19, 2009, noted osteophytic overgrowth and bulging narrowed the ventral subarachnoid space and mild central spinal canal stenosis at C4-5. Another report dated May 22, 2009, from Dr. A, noted that the claimant has "mild stenosis at [C]4-5 . . . with osteophytic overgrowth." A report dated October 1, 2010, from Dr. A also assessed the claimant "with cervical stenosis at C4-5 . . . ." However, none of the reports in evidence give an assessment of disc herniation at C4-5 or characterize the disc protrusion interchangeably with disc herniation.

In reviewing a "great weight" challenge, we must examine the entire record to determine if: (1) there is only "slight" evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's determination that the compensable injury of \_\_\_\_\_, included a C4-5 disc herniation is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Accordingly, we reverse the hearing officer's determination that the compensable injury of \_\_\_\_\_, includes a disc herniation at C4-5 and render a new decision that the compensable injury of \_\_\_\_\_, does not include a disc herniation at C4-5.

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

**RON O. WRIGHT, PRESIDENT  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Cynthia A. Brown  
Appeals Judge

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Margaret L. Turner  
Appeals Judge