

APPEAL NO. 110481
FILED MAY 26, 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 March 17, 2011.

The hearing officer resolved the issues before him by determining that: (1) the compensable injury of _____, extends to the following conditions of the right knee: ACL laxity, MCL sprain, torn meniscus, locked knee/derangement, "effusion & edema," and mild chondromalacia of the medial facet of the patella; and (2) the respondent (claimant) had disability from November 24, 2010, through the date of the hearing, March 17, 2011.

The appellant (carrier) appealed the hearing officer's extent of injury (EOI) and disability determinations. The 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 injured his right knee at work when he climbed down a ladder with equipment and felt his right knee pop.

EOI

The claimant testified that he was initially treated at (Healthcare Provider) on the date of injury, _____. The (Healthcare Provider) medical record dated that day states the claimant was diagnosed with: (1) right knee pain; (2) right knee sprain; and (3) "[p]atellar bone injury-doubt chondromalacia" by (Dr. D), who further stated that based upon "reasonable medical probability this accident today caused these injuries."

A (Healthcare Provider) medical record dated October 28, 2010, lists a diagnosis of knee sprain/strain, with a differential diagnosis of ligament tear/internal derangement, and the referral of the claimant to (Dr. M), an orthopedic specialist.

In a (Healthcare Provider) medical record dated November 4, 2010, the findings of the claimant's examination for the right knee include in part: flexion and extension are not normal for the range of motion; the claimant cannot bend the knee without pain; effusion seen; and patella tracks normally. In that report, the claimant is diagnosed with right knee strain and right knee internal derangement-likely torn meniscus. The claimant was referred for an MRI prior to seeing the orthopedist.

The claimant submitted to an MRI on November 8, 2010. The MRI report in evidence reflects that the findings for the claimant's right knee include:

1. Minimal knee joint effusion and mild subcutaneous edema.
2. Mild proximal MCL sprain.
3. Mild chondromalacia of the medial facet of the patella.
4. Mild ill-defined decreased T2 signal anterior to the patellar tendon within the subcutaneous fat, possibly sequela of prior bursitis or trauma.

Within that MRI report dated November 8, 2010, it is stated that "[n]o discrete linear articular surface tear of the medial or lateral menisci is identified."

In evidence, is a medical record dated November 17, 2010, in which Dr. M diagnosed the claimant with right knee internal derangement, knee pain, internal derangement ACL instability, and sprain/instability ACL due to the claimant's climbing a ladder at work when his right knee gave away "as applying weight to right knee causing twisting/hyperextension of right knee." That same report reflects that there is an "ACL Abnormalities (i.e. Laxity)" with a positive knee exam "Possible ACL Dysfunction and/or Partial ACL Tear" and a local "point" tenderness of the medial meniscus.

In addition, in evidence is a medical record dated November 17, 2010, in which Dr. M stated that the claimant has a positive history for complaints/symptoms associated with specific diagnoses/conditions which may reasonably be associated with specific conditions given context of [the claimant's] history, mechanism of injury, and physical findings, which may or may not include: positive knee history possible synovitis/effusion (post-traumatic); positive knee history possible internal derangement; positive knee history possible meniscus pathology, medial and/or lateral; positive knee history possible ACL dysfunction/attenuation/partial ACL tear. In that same report, Dr. M stated that he found in the claimant's physical examination medial effusion; ACL dysfunction, and patellar maltracting.

In a medical record dated November 24, 2010, Dr. M diagnosed the claimant with right knee ACL laxity; MCL sprain; locked knee/derangement; and torn medial meniscus and placed the claimant in an off work status. Dr. M's medical report in evidence provides no explanation for the new diagnosis of torn medial meniscus or indicates any new diagnostic testing that revealed a torn medial meniscus.

In a subsequent peer review report dated December 1, 2010, (Dr. MC) stated that the carrier has accepted a right knee sprain/strain. Dr. MC further states that he was not provided the MRI report but that it reportedly showed effusion, and no other significant findings of meniscal or ACL damage, although the MRI reportedly picked up

changes involving a proximal MCL sprain. Dr. MC states that there is degenerative pre-existing chondromalacia of the medial facet of the patella according to the MRI.

The claimant submitted to a right knee MRI arthrogram on December 14, 2010, and the arthrogram report in evidence reflects findings of pre-patellar bursitis; mild irregularity meniscocapsular junction posterior horn medial meniscus; and mild chondrosis mid portion medial femoral condyle.

ACL Laxity, MCL Sprain, Locked Knee/Derangement, and "Effusion & Edema"

That portion of the hearing officer's determination that the compensable injury of _____, extends to right knee ACL laxity, MCL sprain, locked knee/derangement, and "effusion & edema" is sufficiently supported by the evidence and is affirmed.

Torn Meniscus and Chondromalacia of the Medial Facet of the Patella

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).

Based on the medical records and the diagnostic testing in evidence, the hearing officer's determination that the compensable injury of _____, extends to right knee torn meniscus and mild chondromalacia of the medial facet of the patella is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Dr. M merely listed a torn meniscus as a diagnosis but no diagnostic test indicated that the claimant actually had a torn meniscus; additionally, Dr. M did not diagnose chondromalacia of the medial facet of the patella resulting from the claimant's work injury of _____, although he noted the findings of the MRI arthrogram. Under the specific facts of this case, the right knee torn meniscus and mild chondromalacia of the medial facet of the patella would require expert medical evidence. See *generally*, Guevara v. Ferrer, 247 S.W.3d 662, 665 (Tex. 2007).

Accordingly, we reverse the hearing officer's determination that the compensable injury of _____, extends to right knee torn meniscus and mild chondromalacia of the medial facet of the patella and render a new decision that the compensable injury of _____, does not extend to right knee torn meniscus and mild chondromalacia of the medial facet of the patella.

DISABILITY

The hearing officer's determination that the claimant had disability resulting from an injury sustained on _____, from November 24, 2010, through the date of the hearing, March 17, 2011, is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm that portion of the hearing officer’s determination that the compensable injury of _____, extends to right knee ACL laxity, MCL sprain, locked knee/derangement, and “effusion & edema.”

We reverse that portion of the hearing officer’s determination that the compensable injury of _____, extends to right knee torn meniscus and mild chondromalacia of the medial facet of the patella and render a new decision that the compensable injury of _____, does not extend to right knee torn meniscus and mild chondromalacia of the medial facet of the patella.

We affirm the hearing officer’s determination that the claimant had disability resulting from an injury sustained on _____, from November 24, 2010, through the date of the hearing, March 17, 2011.

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

**DONALD WEISE
2505 NORTH PLANO ROAD, SUITE 2000
RICHARDSON, TEXAS 75082.**

Cynthia A. Brown
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge