

APPEAL NO. 110701
FILED JULY 18, 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 (CCH) was held on April 27, 2011, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the sole disputed issue by determining that the compensable injury of _____, extends to the diagnosis of a torn right long head of the biceps muscle. The appellant (carrier) appealed the hearing officer's determination on extent of injury, contending that the medical evidence in this case fails to establish, within reasonable medical probability, that the respondent (claimant) suffered a tear to the long head of the right biceps tendon and fails to provide sufficient evidence, within reasonable medical probability, of a causal connection between the claimant's work injury and the claimed extent-of-injury condition. The claimant responded, urging affirmance.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury to his right elbow on _____. The claimant testified that he injured his right arm while opening a wheel valve at work when the 22-pound wheel that he was holding, dropped. He testified that his right arm was hyper-extended and, after it was hurt, his right arm swelled and was painful. The claimant contended that he complained about pain and swelling in his right biceps muscle since his date of injury, _____, and that Dr. M, was the first doctor to discover and diagnose the torn right long head of the biceps muscle in May of 2010.

The claimant continued to work after the date of injury, _____, and did not seek immediate medical attention. The records in evidence reflect that the claimant was seen on September 21, 2009, by Dr. Ci, at CMC, who diagnosed the claimant with medial epicondylitis at the right elbow. The claimant continued working light duty. From October 2009 through April 2010, there is no mention or diagnosis regarding the right biceps muscle other than normal biceps reflexes bilaterally and no documented observation of abnormal right arm musculature in CMC records or in the records of Dr. Mz, a consulting orthopedic doctor, that are in evidence. Also in evidence is a report dated March 3, 2010, from Dr. S, a consulting orthopedic surgeon, who diagnosed contusion of elbow and sprain of ulnar collateral ligament and made no mention of any right biceps problems or complaints. Within that report, Dr. S stated under the muscular section of the physical examination of the claimant that there was "[n]ormal tone; [n]o muscular atrophy/hypertrophy."

On April 2, 2010, the claimant was examined by Dr. H, a designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation to

determine maximum medical improvement (MMI) and impairment rating (IR). Dr. H reviewed the medical records of CMC, Dr. Mz, and Dr. S. In reporting his findings on physical examination, Dr. H documented a “noticeable increase girth of the right arm musculature, measuring 2.25 [centimeters (cm)] at the forearm and 3.25 cm at the arm. Dr. H further stated in his report that:

. . . While I agree that injury to the elbow occurred, I also suspect that [the claimant] has developed a learned pattern of behavior with the right upper extremity that is impeding his recovery from the injury. He guards the arm and keeps the muscles in constant tension, which may account for the increased girth and exaggerated symptoms that were observed”

Dr. M, a referral doctor acting in place of the treating doctor, examined the claimant on May 3, 2010, to determine MMI/IR. In his report dated May 3, 2010, Dr. M stated that the claimant had “a distally retracted right biceps muscle consistent with a torn long head of the biceps.” Dr. M also stated that the claimant “specifically states that this occurred with the _____ injury and did not predate.”

Dr. K, examined the claimant on August 24, 2010, in a post-designated doctor required medical evaluation and noted in his report that the claimant sustained a direct contusion to the right medial elbow and hyper-extended the elbow. In his physical examination, he documented no deformity of the biceps and that the right forearm measured 11 cm and the left 10.5 cm and the right arm 12.5 cm and the left arm 12 cm. Also in evidence is Dr. T, an orthopedic doctor, peer review report, dated December 29, 2010, which states that “[t]he claimant does not have any evidence that the long head of the biceps and retracted biceps muscle is a residual or recurrent condition causally related directly or indirectly to the resolved injury sustained on _____.”

At the CCH, Dr. C, an orthopedic surgeon, testified that a rupture of the long head of biceps is usually the tendon but involves the muscle as well. At the time of the rupture there is usually pain and bruising and an easily observable change in the contour of the musculature, giving a “Popeye” effect. Dr. C opined, to a degree of reasonable medical probability, that after reviewing the medical records of Dr. Ci, Dr. Mz, Dr. T, Dr. S, Dr. M, and Dr. H, because of the lack of clinical findings and of documentation of a “Popeye” effect in the right biceps muscle since _____, the date of injury, the claimed rupture of biceps did not occur until sometime between March and May 2010 and was not related to the claimant’s work injury. Dr. C further opined that this type of injury would not occur due to a claimed mechanism of injury involving a hyper-extended arm.

There is an attenuation factor in this case. Unlike other cases finding lay testimony sufficient evidence of causation, there are no documented right biceps muscle complaints close in time to the work injury of _____. See *generally*, City of Laredo v. Garza, 293 S.W.3d 625 (Tex. App.-San Antonio 2009). There are no medical records in evidence of abnormal right biceps musculature until April 2, 2010, the date of the designated doctor’s examination. Therefore, the conclusion that the

claimant's work injury of _____, caused the diagnosis of a torn right long head of the biceps muscle is a matter beyond common knowledge or experience and would require expert medical evidence. See *generally*, Guevara v. Ferrer, 247 S.W.3d 662 (Tex. 2007). Guevara went on further to state that "[c]ompetent proof of the relationship between the event sued upon and the injuries or conditions complained of has always been required."

Although Dr. M diagnosed a torn right long head of the biceps muscle, Dr. M fails to causally link the claimed condition to the work injury of _____, other than reciting that the claimant asserted that the extent-of-injury condition was caused by the work injury. Dr. M's recital of that diagnosis is merely conclusory. See *generally*, City of Laredo v. Garza, *supra*.

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).

In applying this standard to the facts of this case, the hearing officer's determination that the compensable injury of _____, extends to the diagnosis of a torn right long head of the biceps muscle 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 _____, extends to the diagnosis of a torn right long head of the biceps muscle and render a new decision that the compensable injury of _____, does not extend to the diagnosis of a torn right long head of the biceps muscle.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** 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.**

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge