

APPEAL NO. 110719
FILED AUGUST 4, 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 April 20, 2011, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the compensable injury of _____, extends to a right shoulder GLAD lesion, right shoulder distal supraspinatus tendonitis, degenerative hypertrophy of the AC joint, a small effusion of the AC joint, Grade I tendonosis of the long tendon, and hypertrophy of the right glenohumeral joint.

The appellant (carrier) appealed, contending that the hearing officer's decision is against the great weight and preponderance of the evidence and should be reversed. The appeal file does not contain a response from the respondent (claimant) to the carrier's appeal.

DECISION

Reversed and rendered.

The parties stipulated that on _____, the claimant sustained a compensable injury which includes the cervical spine. The claimant testified that he injured his neck and right shoulder while moving tires when organizing a tire room for the employer. He testified that this required lifting tires from the floor and sometimes climbing a ladder with the tires on his shoulder. The extent-of-injury conditions in dispute are all related to the claimant's right shoulder and were included in either the impression section of the MRI taken of the claimant's right shoulder on March 30, 2010, or the impression section of the MRI taken of the claimant's right shoulder on September 25, 2008. X-rays performed on the claimant's right shoulder and right AC joint taken on February 15, 2010, give an impression of mild degenerative hypertrophy of the right AC joint. The hearing officer noted in his Background Information that the diagnoses are consistent with the mechanism of the injury and determined that the compensable injury included all of the conditions in dispute.

The Appeals Panel has previously held that proof of causation must be established to a reasonable medical probability by expert evidence where the subject is so complex that a fact finder lacks the ability from common knowledge to find a causal connection. Appeals Panel Decision (APD) 022301, decided October 23, 2002. See *also Guevara v. Ferrer*, 247 S.W.3d 662 (Tex. 2007). To be probative, expert testimony must be based on reasonable medical probability. *City of Laredo v. Garza*, 293 S.W.3d 625 (Tex. App.—San Antonio 2009, no pet.) citing *Insurance Company of North America v. Meyers*, 411 S.W.2d 710, 713 (Tex. 1966).

The claimant was initially diagnosed with a right shoulder sprain/strain and muscle spasm. Subsequently, the claimant's treating doctor diagnosed the claimant with impingement syndrome of the right shoulder. Additionally, in evidence is a Work Status Report (DWC-73) which includes GLAD tear along the glenoid labrum under the heading "[o]ther [r]estrictions." In evidence is correspondence from a doctor who performed a peer review dated June 24, 2010, who opines that the mechanism of the work event would not correlate well with the MRI findings of a glenoid labrum tear. The peer review report noted that the MRI contained other pre-existing degenerative changes. Both the peer review and the Independent Review Organization's reports support for denial of requested shoulder surgery reference notes from the claimant's treating doctor that diagnose the claimant with right shoulder tenosynovitis, joint effusion and GLAD tear, however, these specific notes are not in evidence. No medical records in evidence opine that the claimant's mechanism of injury resulted in the specific claimed conditions in dispute. Under the facts of this case, the findings of the MRI and x-rays without attendant explanation how these conditions may be related to the compensable injury does not establish the condition is related to the compensable injury within a reasonable degree of medical probability. See APD 101323-s, decided November 8, 2010.

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).

We reverse the hearing officer's determination that the compensable injury of _____, extends to a right shoulder GLAD lesion, right shoulder distal supraspinatus tendonitis, degenerative hypertrophy of the AC joint, a small effusion of the AC joint, Grade I tendonosis of the long tendon, and hypertrophy of the right glenohumeral joint. We render a new decision that the compensable injury of _____, does not extend to a right shoulder GLAD lesion, right shoulder distal supraspinatus tendonitis, degenerative hypertrophy of the AC joint, a small effusion of the AC joint, Grade I tendonosis of the long tendon, and hypertrophy of the right glenohumeral joint.

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

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3232.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge