

APPEAL NO. 120850
FILED JUNE 28, 2012

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 17, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the sole disputed issue before him, the hearing officer determined that the compensable injury of [date of injury], extends to cervical disc protrusions at C3-4, C4-5, and C6-7, but does not extend to left carpal tunnel syndrome (CTS) and bilateral ulnar motor neuropathy. The appellant/cross-respondent (claimant) appealed that portion of the hearing officer's extent-of-injury determination adverse to the claimant. The respondent/cross-appellant (carrier) responded, urging affirmance as to those disputed conditions. The carrier cross-appealed that portion of the extent-of-injury determination adverse to the carrier. The claimant responded, urging affirmance as to those disputed conditions.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury]. The claimant testified that she worked on an assembly line as an absentee replacer, filling in for absent workers on any jobs on the line. On [date of injury], the claimant testified that she was at work and pushing on a part that was to be installed on a car seat when she felt a sharp pain in her neck and left arm. In evidence is a Notice of Disputed Issues(s) and Refusal to Pay Benefits (PLN-11) dated December 12, 2011, which states that the carrier accepted a cervical strain with radiculopathy and left shoulder sprain/strain only and disputed that the compensable injury extends to a cervical protrusion, left side CTS, bilateral ulnar motor neuropathy across the elbow and any other new findings or diagnoses.

CERVICAL DISC PROTRUSIONS

That portion of the hearing officer's extent-of-injury determination that the compensable injury of [date of injury], extends to cervical disc protrusions at C3-4, C4-5, and C6-7 is supported by sufficient evidence and is affirmed.

CTS AND BILATERAL ULNAR MOTOR NEUROPATHY

Section 401.011(10) provides that "[c]ompensable injury" means an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle. Section 401.011(26) provides that "[i]njury" means damage or harm to the physical structure of the body and a disease or infection naturally

resulting from the damage or harm. The term includes an occupational disease. Section 401.011(34) provides in pertinent part that “[o]ccupational disease” means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury.

The hearing officer, in the Background Information section of his decision stated:

[The] [c]laimant’s surgeon [(Dr. B)] provided a letter of causation that thoroughly explained the mechanism of injury and how that mechanism of injury caused the contended diagnoses. What [Dr. B] did that was most helpful was to explain how the sudden pop between [the] [c]laimant’s neck and shoulder caused the cervical disc pathologies. [Dr. B] then explained the left [CTS] and bilateral ulnar motor neuropathy are due to the repetitive motion of [the] [c]laimant’s job. This is not a repetitive motion injury and this was not argued as a repetitive motion trauma. [The] [c]laimant met her burden of proof to establish the cervical disc protrusions The left [CTS] and bilateral ulnar motor neuropathy are not due to the compensable injury.

Our review of the record indicates that the claimant litigated at the CCH the theory that the diagnosed left CTS and bilateral ulnar motor neuropathy are due to repetitive motion trauma. Furthermore, the parties stipulated that the claimant sustained a compensable injury. As previously discussed a compensable injury includes a repetitive trauma injury.

In evidence is a benefit review conference report dated February 28, 2012, which lists the certified issue as “[d]oes the compensable injury of [date of injury], extend to and include cervical disc protrusions at C3-4, C4-5 and C6-7, left [CTS] and bilateral ulnar motor neuropathy?” The claimant’s position is “[i]n a letter dated [November 4, 2011], treating doctor referral [Dr. B], explains the causation and how the mechanism of injury caused these conditions.”

Also in evidence is the letter dated November 4, 2011, by Dr. B. Dr. B states in part:

[The claimant] was working on an assembly line lifting heavy seats when she felt a sharp pain in her neck and shoulder at work on [date of injury]. [The claimant] reported to me that she works in an assembly line placing plastic shields into metal frames of the GMC vehicles. In performing this task she has 45 seconds in which to make sure the shields are placed properly. She must stand with her feet locked in place on the ground and the top half of her body is facing the direction of the seats and she must

use her full body weight to place the shield into position as they must to be fit securely. If the plastic shields are not positioned correctly she must replicate the process until the fit is perfect. She typically works a 12 hour shift 6 days a week and has to complete approximately 500-600 seats in her shift.

I examined and treated [the claimant] for her [date of injury], workers' compensation injury. After examining [the claimant], it is my impression that she does have . . . , left side [CTS], and bilateral ulnar motor neuropathy across the elbow as a result of her work injury of [date of injury] I have also reviewed the upper extremity EMG report and believe that [the claimant] did sustain . . . , left side [CTS] and bilateral ulnar motor neuropathy across the elbow as a result of her [date of injury], workers' compensation injury.

* * * *

. . . . Also, in my medical opinion, when [the claimant] was performing the repetitive task of placing the plastic shields on 500-600 car seats per day, has also led injuring (*sic*) her left wrist which produced the left side [CTS] and bilateral ulnar motor neuropathy across the elbow[s].

In Appeals Panel Decision (APD) 010376, decided March 28, 2001, the hearing officer resolved the sole issue at the CCH by determining that the claimant's compensable injury extended to include bilateral CTS. In that case, the carrier contended that the claimant could not argue that he suffered both a discrete, traumatic lifting injury and a repetitive trauma injury on the same day, particularly if the claimant did not raise the repetitive trauma injury claim as an occupational disease. The Appeals Panel affirmed the hearing officer's decision, stating "[t]he fact that the claimant claimed a discrete trauma injury does not preclude him from arguing that his injury on [the date of injury], extended to and included bilateral CTS, commonly claimed as an occupational disease."

The hearing officer erred in basing his determination that the compensable injury of [date of injury], did not extend to left CTS and bilateral ulnar motor neuropathy on an analysis of specific versus repetitive trauma injury. The parties had stipulated to a compensable injury. By definition, compensable injury includes a repetitive trauma injury. Also, there was medical evidence that causally linked the claimant's repetitive motions to her work injury. Dr. B's causation letter could be read to mean repetitive motions during the single day of [date of injury], or to repetitive motions during each day of the claimant's shifts at work. However, there must be a proper analysis of all of the

evidence, which includes Dr. B's November 4, 2011, letter, by the hearing officer as to the sufficiency of the medical evidence to causally link the claimed left CTS and bilateral ulnar motor neuropathy to the work injury sustained by the claimant.

This analysis was not done by the hearing officer in making his extent-of-injury determination. Accordingly, we reverse that portion of the hearing officer's extent-of-injury determination that the compensable injury of [date of injury], does not extend to left CTS and bilateral ulnar motor neuropathy and remand that portion of the extent-of-injury issue to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm that portion of the hearing officer's extent-of-injury determination that the compensable injury of [date of injury], extends to cervical disc protrusions at C3-4, C4-5, and C6-7.

We reverse that portion of the hearing officer's extent-of-injury determination that the compensable injury of [date of injury], does not extend to left CTS and bilateral ulnar motor neuropathy and remand that portion of the extent-of-injury issue to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand, in accordance with this decision, the hearing officer is to consider and make a finding of fact, conclusion of law, and a decision on whether the compensable injury of [date of injury], extends to left CTS and bilateral ulnar motor neuropathy. No additional evidence is required.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **AMERICAN ZURICH 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.**

Cynthia A. Brown
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge