

APPEAL NO. 121098  
FILED AUGUST 6, 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 was held on May 3, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the disputed issue before her, the hearing officer determined that the [date of injury], compensable injury extends to left shoulder avascular necrosis (AVN), chronic posterior labral tear, and moderate acromioclavicular (AC) joint degeneration but does not extend to a cervical sprain/strain.

The appellant/cross-respondent (self-insured) appealed that portion of the hearing officer's extent-of-injury determination that was adverse to the self-insured. The respondent/cross-appellant (claimant) responded, urging affirmance of that portion of the extent-of-injury determination.

The claimant cross-appealed that portion of the hearing officer's extent-of-injury determination that was adverse to the claimant. The self-insured responded, urging affirmance of that portion of the extent-of-injury determination.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that: (1) on [date of injury], the claimant sustained a compensable injury in the form of a left shoulder sprain/strain while in the course and scope of her employment with the [Employer]; and (2) [Dr. R] is the designated doctor in this case on the issue of extent of injury to a left shoulder posterior labral tear.

The claimant testified that on the date of injury, she injured her left shoulder and neck while pulling on a stuck tray slot in a cell door. Although initially treated at an emergency room and by [Dr. M], she did not complain of her neck until she first saw [Dr. N]. Medical records in evidence reflect that the claimant began seeing Dr. N, the last part of July in 2011.

The claimant further testified that she had previously been diagnosed with AVN in 2003 when she injured her hips due to a sport injury and had bilateral hip replacement surgery. The claimant also stated that it was her understanding that AVN was death of the bone.

The self-insured accepted a left shoulder sprain/strain as the [date of injury], compensable injury but filed a dispute of the other claimed conditions.

In evidence is the claimant's operative report dated December 27, 2011. The operative report lists the pre-operative and post-operative diagnosis as left shoulder AVN and lists the code for aseptic necrosis of head of humerus. The procedure performed was listed as left shoulder hemarthroplasty. The claimant testified that the surgery was to replace her left shoulder joint.

### **LEFT SHOULDER CLAIMED CONDITIONS**

In the Background Information section of her decision, the hearing officer stated:

The extent issue herein turns on whether the medical evidence establishes a causal connection between the delineated conditions and the [c]laimant's compensable [date of injury], injury. There is no question, based on the medical evidence, that each of the disputed left shoulder conditions ([AVN], chronic posterior labral tear, and moderate AC joint degeneration) predated the [c]laimant's [date of injury], injury. After a careful review of the entire record, it is determined that the medical evidence does support a finding that these disputed left shoulder conditions were aggravated by the [date of injury], injury. This determination is based on the report of the designated doctor . . . [Dr. R]. The preponderance of the other medical evidence is not contrary to [Dr. R's] report. It should be noted that the parties stipulated at the hearing that [Dr. R] was selected to address extent of injury relative only to the left shoulder posterior labral tear, but a review of the EES-14 letter that gave notice of the [Texas Department of Insurance, Division of Workers' Compensation] selection of [Dr. R] as [designated doctor] and the purpose of her examination states that she is to address extent of the employee's compensable injury, without limiting it to any particular condition . . . . It is Section VIII, box C, of the [c]laimant's [Request for Designated Doctor (DWC-32)] that states only 'left shoulder posterior labral tear' in her request for a [designated doctor] to address extent of injury.

We agree with the hearing officer's analysis of the EES-14 letter and the appointment of the designated doctor in this case to address the extent of the compensable injury. We find there is no merit to the self-insured's contention that Dr. R's opinion is entitled to presumptive weight only as to the condition of left shoulder posterior labral tear because of the wording of the DWC-32.

The self-insured further contends in its appeal that the claimant needed expert medical evidence to establish, within a reasonable degree of medical probability, that

the claimed left shoulder conditions are causally linked to the [date of injury], work injury. The self-insured argues that the designated doctor's narrative report is conclusory and that neither the designated doctor nor any other doctor gives an explanation how the [date of injury], work injury aggravated, enhanced or worsened the disease processes or pre-existing, degenerative conditions in the claimant's left shoulder.

Dr. R, the designated doctor, examined the claimant on August 31, 2011. In her narrative report, dated that same day, Dr. R stated:

Extent: The examinee has chronic changes in the [left] shoulder, specifically [AVN], chronic posterior labral tear and a moderate AC joint degeneration. Based on the MRI, some acute changes include bursitis in this subacromial-sub deltoid region, which is indicated by moderate to fluid accumulation and edema. There is also evidence of fluid in the bicipital tendon sheath indicating bicep tendinitis . . . .

Based on the above information, this patient has chronic abnormalities in the shoulder and the neck, but her pain is directly related to and a result of the aggravation of said findings resulting from the trauma experienced on the date of employment [[date of injury]], and are therefore considered to be compensable damages.

Although Dr. R concluded that the claimant's pain is directly related to and a result of the aggravation of the claimant's pre-existing shoulder conditions, Dr. R failed to explain how the conditions at issue were enhanced, accelerated or worsened by the mechanism of the injury on [date of injury]. The acute changes referenced by Dr. R include bursitis in this subacromial-sub deltoid region and bicep tendinitis, which are not the specific shoulder conditions at issue.

[Dr. F], a post-designated doctor required medical examination (RME) doctor, examined the claimant on November 15, 2011, and issued an opinion adverse to the claimant in a report dated November 15, 2011. In evidence is an addendum by Dr. F dated December 14, 2011, in which Dr. F stated:

The mechanism of injury would not lead to a posterior labral tear since there was no fall on the outstretched hand, nor was there any overhead activity to produce such changes . . . .

Dr. [R] has an excellent report . . . however, I do disagree with her conclusions that 'her pain is directly related to and a result of the aggravation of said findings resulting from the trauma experienced . . . .'

\* \* \* \*

. . . . The degenerative changes in the shoulder are age-related, and not compensable to the [work] incident in question. It remains my opinion that the extent of the compensable injury would be at most, a left shoulder sprain/strain.

Also in evidence is a peer review report from [Dr. J] dated August 4, 2011. Dr. J stated:

The mechanism of injury described in the initial injury report and in subsequent clinical progress notes was a strong pull exerted on a food tray . . . . In my opinion this patient sustained an acute strain/sprain of the musculature of the left arm and possibly some traction strain of the supporting structures of the left shoulder . . . the findings of degenerative arthritis of the [AC] joint have been present for many months, and could not have developed in such a short period of time. The appearance of the posterior labral tear is chronic in that the edges are blunted and there was no acute edema or joint effusion as would be expected in a more acute process. The appearance of the osteonecrosis involving the left humeral head demonstrates a thin rim of T2 hyperintensity. This is consistent with a process that is at least three months old, and therefore, could not have occurred as a result of the traction injury on [date of injury].

There are no medical reports/letters from the claimant's treating doctors, Dr. M or Dr. N, causally linking the claimed left shoulder conditions to the [date of injury], work injury or explaining how the work injury aggravated the claimant's pre-existing left shoulder conditions.

Section 408.0041(a)(3) provides that at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about the extent of the employee's compensable injury. Section 408.0041(e) provides, in part, that the report of the designated doctor has presumptive weight unless the preponderance of the evidence is to the contrary.

The Texas courts have long established the general rule that "expert testimony is necessary to establish causation as to medical conditions outside the common knowledge and experience" of the fact finder. Guevara v. Ferrer, 247 S.W.3d 662 (Tex. 2007). 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) 111262, decided October 18, 2011. See *a/so City of Laredo v. Garza*, 293 S.W.3d 625 (Tex. App.-San Antonio 2009, no pet.) citing Guevara.

The etiology or aggravation of AVN, chronic posterior labral tear, and moderate AC joint degeneration are not matters of common experience and require expert medical evidence, based on reasonable medical probability, to causally link the claimed conditions to the work injury. See APD 001825, decided September 12, 2000.

When an injury is asserted to have occurred by way of an aggravation of a pre-existing condition, there must be evidence that there was a pre-existing condition and there was some enhancement, acceleration, or worsening of the underlying condition. The burden of proving that there is a compensable injury or aggravation of a pre-existing condition is on the claimant. APD 001825, *supra*.

Under the facts of this case, with the described mechanism of injury and the medical report of Dr. R (as quoted above), there is insufficient expert medical evidence to establish that the conditions of left shoulder AVN, chronic posterior labral tear, and moderate AC joint degeneration were aggravated by, and naturally resulted from, the claimant's [date of injury], compensable injury. Dr. R's opinion was conclusory without attendant explanation to causally link the claimed conditions to the work injury. Neither Dr. R, nor any other doctor, explained how pulling on a stuck tray slot enhanced, worsened, or accelerated the claimant's pre-existing conditions of left shoulder AVN, chronic posterior labral tear, or moderate AC joint degeneration.

In evidence are the reports of Dr. F, the RME doctor, and Dr. J, a peer review doctor, who opined that the [date of injury], work injury neither caused the claimed left shoulder conditions nor aggravated the claimant's pre-existing left shoulder conditions.

The hearing officer erred in stating that the preponderance of the other medical evidence is not contrary to the designated doctor's report and in affording presumptive weight to Dr. R's opinion on the extent of the compensable injury. The hearing officer's finding that the claimed left shoulder conditions were aggravated by, and naturally resulted from, the claimant's [date of injury], compensable injury is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

Accordingly, we reverse that portion of the hearing officer's extent-of-injury determination that the claimant's [date of injury], compensable injury extends to left shoulder AVN, chronic posterior labral tear, and moderate AC joint degeneration and we render a new decision that the claimant's [date of injury], compensable injury does not

extend to left shoulder AVN, chronic posterior labral tear, and moderate AC joint degeneration.

### **CERVICAL SPRAIN/STRAIN**

That portion of the hearing officer's extent-of-injury determination that the [date of injury], compensable injury does not extend to a cervical sprain/strain is supported by sufficient evidence and is affirmed.

### **SUMMARY**

We reverse that portion of the hearing officer's extent-of-injury determination that the claimant's [date of injury], compensable injury extends to left shoulder AVN, chronic posterior labral tear, and moderate AC joint degeneration and render a new decision that the claimant's [date of injury], compensable injury does not extend to left shoulder AVN, chronic posterior labral tear, and moderate AC joint degeneration.

We affirm that portion of the hearing officer's extent-of-injury determination that the [date of injury], compensable injury does not extend to a cervical sprain/strain.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**JONATHAN D. BOW, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR  
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**JONATHAN D. BOW, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777.**

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Cynthia A. Brown  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge