

APPEAL NO. 122064  
FILED NOVEMBER 29, 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 September 10, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [date of injury], extends to a right elbow medial epicondylitis, right elbow extensor tendon tear and causalgia/reflex sympathetic dystrophy (RSD)/chronic regional pain syndrome (CRPS) of the right upper extremity (UE); (2) the respondent (claimant) has not reached maximum medical improvement (MMI); (3) because the claimant has not reached MMI, an impairment rating (IR) cannot be assigned; and (4) the claimant had disability for the period beginning October 18, 2011, and continuing to the present due to the injury of [date of injury]. The appellant (carrier) appealed the hearing officer's extent of injury, MMI, IR, and disability determinations, contending that the extent-of-injury determination is not supported by the evidence and the other three determinations are in error because they are premised on that extent-of-injury determination. 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 [date of injury], and that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed [Dr. O] on the issues of MMI, IR, return to work, and extent of injury. The claimant testified that she hurt her right elbow when she struck it on a metal file cart. The carrier accepted a right elbow contusion and right elbow ulnar motor neuropathy. [Dr. W] performed right elbow surgery, an ulnar nerve transposition surgery, on May 16, 2011.<sup>1</sup> The claimant further testified that she was referred to post-surgery physical therapy at [rehab center]. While at [rehab center] and on an exercise bike, the claimant testified that she sustained a right elbow extensor tendon tear, arguing that this extent-of-injury condition arose out of the treatment for her compensable injury of [date of injury].

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<sup>1</sup> We note that Dr. W's operative report dated May 16, 2011, incorrectly identifies the procedure performed was the "left" ulnar nerve transposition when the procedure was to the "right" ulnar nerve as reflected in the other medical records in evidence. (The designated doctor's narrative reflects a surgical procedure to the right elbow.)

## EXTENT OF INJURY

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 111262, decided October 18, 2011. See also City of Laredo v. Garza, 293 S.W.3d 625 (Tex. App.-San Antonio 2009, no pet.) citing Guevara.

### Right Elbow Medial Epicondylitis and Causalgia/RSD/CRPS of the Right UE

The hearing officer's determination that the compensable injury of [date of injury], extends to right elbow medial epicondylitis and causalgia/RSD/CRPS of the right UE is supported by sufficient evidence and is affirmed.

### Right Elbow Extensor Tendon Tear

Dr. O, the designated doctor, initially examined the claimant for purposes of MMI/IR and return to work on September 17, 2011, for the accepted diagnosis of right median elbow contusion. Following the examination, the claimant and the carrier signed and the Division approved a Benefit Dispute Agreement (DWC-24) dated January 6, 2012, agreeing that the compensable injury of [date of injury], extends to a right elbow ulnar motor neuropathy. Subsequent to that DWC-24, the claimant requested a re-examination by the designated doctor to rate the entire compensable injury. Specifically in the Request for Designated Doctor Examination (DWC-32), the designated doctor was asked to address the "partial tear of the common extensor tendon of the right [UE]." Although two prior MRIs of the right elbow, dated April 8, 2010, and March 8, 2011, did not reveal a right elbow extensor tear of the tendon, a post-surgery right elbow MRI, dated October 18, 2011, revealed a partial tear of the common extensor tendon.

Dr. O re-examined the claimant on March 31, 2012, and in his narrative report dated April 19, 2012, regarding the extent of the compensable injury of [date of injury],

Dr. O opined that “causalgia/RSD of the right elbow are related to the traumatic blow (injury) to the elbow and likely exacerbated by the subsequent surgery.” Dr. O did not address or opine about the claimed extent-of-injury condition of right elbow extensor tendon part. There is no documented history by the claimant of an injury sustained in post-surgery physical therapy in Dr. O’s narrative.

The functional capacity evaluation report by [rehab center] in evidence does not document a complaint by the claimant of injuring her elbow while on an exercise bike for post-surgery physical therapy. No other physical therapy records of [rehab center] are admitted into evidence.

[Dr. I] in a report dated February 23, 2012, notes the results of the MRI scan that revealed a partial tear of the right elbow tendon but does not causally relate that diagnosis to the work injury of [date of injury], or to an injury sustained during the treatment (post-surgery physical therapy) for the compensable injury.

In a peer review report dated February 26, 2012, [Dr. J] states that the compensable injury of [date of injury], does not extend to a partial tear of the common extensor tendon of the right elbow because “[t]here is no documentation of symptoms or physical findings related to the right lateral elbow (site of the common extensor tendon origins) in any of the provider or [physical therapy] notes. . . . The MRI of the right elbow on [. . .], one year, eight months post-injury, described a partial thickness tear of the common extensor tendons. An injury to the medial elbow would not cause a common extensor tendon tear on the opposite side of the elbow as indicated in the MRI of [October 18, 2011].” Furthermore, in his narrative report, [Dr. K], a post-designated doctor required medical examination doctor to address MMI/IR, return to work, and extent of injury, did not include a right elbow extensor tendon tear in his extent-of-injury determination.

Because there is no medical provider causally linking the claimed right elbow extensor tendon tear to the work injury of [date of injury], or to the treatment of the compensable injury, the hearing officer’s determination that the compensable injury of [date of injury], extends to a right elbow extensor tendon tear is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

We reverse the hearing officer’s determination that the compensable injury of [date of injury], extends to a right elbow extensor tendon tear and render a new decision that the compensable injury of [date of injury], does not extend to a right elbow extensor tendon tear.

## **MMI/IR AND DISABILITY**

The hearing officer's determinations that the claimant has not reached MMI and because the claimant has not reached MMI, an IR cannot be assigned are supported by sufficient evidence and are affirmed.

The hearing officer's determination that the claimant had disability from October 18, 2011, to the present is supported by sufficient evidence and is affirmed.

## **SUMMARY**

We affirm the hearing officer's decision that the compensable injury of [date of injury], extends to right elbow medial epicondylitis and causalgia/RSD/CRPS of the right UE.

We reverse the hearing officer's decision that that the compensable injury of [date of injury], extends to a right elbow extensor tendon tear and render a new decision that the compensable injury of [date of injury], does not extend to a right elbow extensor tendon tear.

We affirm the hearing officer's decision that the claimant has not reached MMI and because the claimant has not reached MMI, an IR cannot be assigned.

We affirm the hearing officer's decision that the claimant had disability from October 18, 2011, to the present.

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

**RON O. WRIGHT, PRESIDENT  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723.**

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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