APPEAL NO. 122085
FILED DECEMBER 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 (CCH) was held on September 12, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that on [date of injury], the respondent (claimant) sustained a compensable injury in the form of an occupational disease which manifests itself as left rotator cuff tear (RCT), left complete RCT with biceps tendon, left partial tear with labral tear, a condition requiring left acromioclavicular arthropathy, left elbow olecranon bursitis, and left elbow olecranon exostosis.

The appellant (self-insured) appeals the hearing officer's determination that the claimant sustained a compensable injury in the form of an occupational disease which manifests itself as the disputed conditions. The claimant responded, urging affirmance.

DECISION

Reversed and rendered.

The parties agreed at the CCH to modify the issue to the following: "Did [the] [c]laimant sustain a compensable injury in the form of an occupational disease which manifests itself as left RCT, left complete RCT with biceps tendon, left partial tear with labral tear, a condition requiring left acromioclavicular arthropathy, left elbow olecranon bursitis, and left elbow olecranon exostosis with a date of injury of [date of injury]?" The claimant testified that she has worked for the employer for approximately 26 years. The claimant testified that she worked on various systems of an airplane and her work required upper body strength. The claimant testified that the exact nature of her job duties varies day to day.

The hearing officer found that the claimant has been diagnosed with the conditions in dispute and that her injurious conditions arose as a result of her employment. However, the hearing officer also found that the claimant's employment placed her at a greater risk of developing the conditions in dispute. Section 406.032 provides, in part, that an insurance carrier is not liable for compensation if the injury arose out of an act of God, unless the employment exposes the employee to a greater risk of injury from an act of God than ordinarily applies to the general public. We note that an analysis of whether or not the claimant was at a greater risk of injury is not applicable to facts of this case. No act of God was alleged to be the mechanism of injury.

A medical record dated [date of injury], with an addendum dated October 3, 2011, noted that the claimant presented with elbow pain and stated she pushed off on the bed and heard a pop coming from the elbow. A medical note dated October 18, 2011, states that the claimant indicated her pain began two weeks ago in her shoulder and elbow but did not specifically identify any type of injury to these areas.

The claimant had left elbow surgery on December 5, 2011, with the procedure described as excision of olecranon bursa and exostosis. In evidence is a medical note dated February 5, 2012, which states that the claimant had been treated at the clinic for an elbow injury. The same medical note states that "[i]t is possible that these conditions, both left elbow and left shoulder, could exist from repetitive tasking such as lifting, carrying, pushing, or pulling." Other medical records in evidence note that the claimant describes her job as repetitive and diagnose her with the disputed conditions but no other record attempts to establish causation of the specific conditions at issue to any specific activity performed by the claimant in the course and scope of her employment.

The claimant had left shoulder surgery on March 20, 2012, with the following procedures listed as performed: suprascapular nerve block for post-operative management; arthroscopic repair of complete chronic [RCT] with complete debridement of labrum, acromioplasty, mumford procedure, and biceps tenotomy.

A peer review in evidence dated June 19, 2012, opines that the described mechanism of repetitive use is not consistent with the imaging studies and that the surgical interventions that have been accomplished have clearly addressed conditions that are not a function of the reported mechanism of injury.

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).

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. *See* APD 001825, decided September 12, 2000.

In this case, there is insufficient medical evidence that causally connects the specific claimed conditions of the left shoulder and elbow to the work injury. The mere fact that the conditions are identified on an MRI or are mentioned in a medical report is insufficient to show that those conditions are related to the work injury within a reasonable medical probability as required by Guevara, *supra*, and City of Laredo, *supra*. Reports which say "could be" or "it is possible" do not meet the standard of reasonable medical probability required by Guevara and City of Laredo.

We hold that the hearing officer's determination that on [date of injury], the claimant sustained a compensable injury in the form of an occupational disease which manifests itself as left RCT, left complete RCT with biceps tendon, left partial tear with labral tear, a condition requiring left acromioclavicular arthropathy, left elbow olecranon bursitis, and left elbow olecranon exostosis to be 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 on [date of injury], the claimant sustained a compensable injury in the form of an occupational disease which manifests itself as left RCT, left complete RCT with biceps tendon, left partial tear with labral tear, a condition requiring left acromioclavicular arthropathy, left elbow olecranon bursitis, and left elbow olecranon exostosis and render a new decision that on [date of injury], the claimant did not sustain a compensable injury in the form of an occupational disease which manifests itself as left RCT, left complete RCT with biceps tendon, left partial tear with labral tear, a condition requiring left acromioclavicular arthropathy, left elbow olecranon bursitis, and left elbow olecranon exostosis.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

COMPANY
[ADDRESS]
[CITY], TEXAS [ZIP CODE].

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge