

APPEAL NO. 132195
FILED NOVEMBER 20, 2013

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 July 24, 2013, with the record closing on August 19, 2013, 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 labral tear, joint effusion, tendinitis, peritendinitis, and AC arthropathy of the right shoulder; and (2) the respondent (claimant) had disability beginning October 18, 2012, and continuing through the date of the hearing due to the compensable injury of [date of injury]. The appellant (carrier) appeals the hearing officer's determinations, contending that the claimant failed to present reliable expert medical evidence of causation to prove the compensability of the extent conditions in dispute. The carrier further argued that the claimant did not sustain disability because work within her restrictions was available but for her termination for cause. The appeal file does not contain a response from the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury]. The claimant testified that she injured her right shoulder when she lifted a stack of 16 food trays while working in the school cafeteria.

DISABILITY

The hearing officer's determination that the claimant had disability beginning October 18, 2012, and continuing through the date of the hearing due to the compensable injury of [date of injury], is supported by sufficient evidence and is affirmed. The claimant testified that she could not return to work due to the compensable injury. Additionally, the Work Status Report (DWC-73s) in evidence from [Dr. F], place the claimant under restrictions from October 12, 2012, through February 15, 2013, due to a right shoulder strain.

EXTENT OF INJURY

The hearing officer determined that the compensable injury of [date of injury], extends to a labral tear, joint effusion, tendinitis, peritendinitis, and AC arthropathy of the right shoulder.

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. See 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).

Under the facts of this case, the claimed conditions require expert evidence to establish a causal connection with the compensable injury. Although the claimed conditions are listed in the record there is not any explanation of causation for the claimed conditions in the record. The mere recitation of the claimed conditions in the medical records without attendant explanation of how those conditions may be related to the compensable injury does not establish those conditions are related to the compensable injury within a reasonable degree of medical probability. APD 110054, decided March 21, 2011.

The claimant initially sought treatment with Dr. F, who diagnosed the claimant with a right shoulder sprain/strain on October 12, 2012. After attempting to return to work with another employer, the claimant returned to Dr. F on February 6, 2013, complaining of worsening right shoulder symptoms. Dr. F ordered an MRI of the right shoulder, which was performed on February 20, 2013, and referred the claimant to [Dr. M], an orthopedic specialist. There are no further medical records in evidence from Dr. F after this date and none that address the extent conditions in dispute.

The hearing officer states in the Background Information section of his decision that “[i]n his office note of April 11, 2013, Dr. [M] indicated his opinion that the work related injury caused strains and sprains of the shoulder and upper arm and the MRI findings including superior glenoid labrum lesion.” In the April 11, 2013, office note in evidence, Dr. M lists the February 20, 2013, MRI results as “a small effusion, tendinitis, AC joint hypertrophy, and labral tear.” The MRI lists the following impressions of the right shoulder: small joint effusion present; tendinitis and peritendinitis, rotator cuff intact; subtle signal abnormality within the anterosuperior/inferior labrum, likely subtle labral injury present; and AC arthropathy with inflammatory changes, mild medial arch narrowing. No frank lateral arch stenosis defined. The MRI does not list a specific diagnosis of labral tear. Additionally, Dr. M’s office note fails to explain how the work injury of [date of injury], caused the labral tear, joint effusion, tendinitis, peritendinitis, and AC arthropathy of the right shoulder.

As there are no medical records, including the records from Dr. F and Dr. M, that explain how the injury of [date of injury], caused the claimed conditions, we reverse the hearing officer's determination that the compensable injury of [date of injury], extends to a labral tear, joint effusion, tendinitis, peritendinitis, and AC arthropathy of the right shoulder, and we render a new decision that the compensable injury of [date of injury], does not extend to a labral tear, joint effusion, tendinitis, peritendinitis, and AC arthropathy of the right shoulder.

SUMMARY

We affirm the hearing officer's determination that the claimant had disability beginning October 18, 2012, and continuing through the date of the hearing due to the compensable injury of [date of injury].

We reverse the hearing officer's determination that the compensable injury of [date of injury], extends to a labral tear, joint effusion, tendinitis, peritendinitis, and AC arthropathy of the right shoulder, and we render a new decision that the compensable injury of [date of injury], does not extend to a labral tear, joint effusion, tendinitis, peritendinitis, and AC arthropathy of the right shoulder.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge