

APPEAL NO. 132643
FILED JANUARY 21, 2014

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 October 3, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the date of injury is [date of injury], and that the compensable injury of [date of injury], extends to a ganglion cyst and left volar carpi radialis tenosynovitis. The appellant (carrier) appealed both of the hearing officer's determinations. The carrier contends that the hearing officer abused his discretion by refusing to correct a typographical error in the extent-of-injury issue, and that the claimant failed to meet her burden of proof regarding the extent-of-injury conditions. Respondent 1 (claimant) responded, urging affirmance of the hearing officer's determinations. The file does not contain a response from respondent 2 (subclaimant).

DECISION

Reformed in part, affirmed in part, and reversed and rendered in part.

The parties stipulated that the compensable injury includes at least a left wrist sprain/strain. The claimant testified she injured her left wrist when she was pushing down on a tool with both hands and exerting her body weight as she attempted to crimp several thick wires onto a frame.

EVIDENCE PRESENTED

We reform the hearing officer's decision to show that Carrier's Exhibit H was admitted into evidence.

PROCEDURAL RULING

The carrier contends in its appeal that the hearing officer abused his discretion in refusing to correct an alleged typographical error in the Benefit Review Conference (BRC) report. The carrier alleges that the BRC report incorrectly states that the extent-of-injury issue addresses a ganglion cyst and left volar carpi radialis tenosynovitis, when the actual extent conditions discussed at the BRC were recurrent ganglion cyst and left volar carpi radialis tenosynovitis. At the CCH the carrier requested the hearing officer to amend the extent-of-injury issue to include the phrase "recurrent ganglion cyst" rather than "ganglion cyst." 28 TEX. ADMIN. CODE § 142.7(a) (Rule 142.7(a)) states that disputes not expressly included in the statement of disputes will not be considered by the hearing officer. Rule 142.7(c) provides that a party may submit a response to the

disputes identified as unresolved in the BRC report. Rule 142.7(d) is a provision for adding disputes by unanimous consent. Neither of these provisions was applicable in this case. Rule 142.7(e) provides in part:

Additional disputes by permission of the hearing officer. A party may request the hearing officer to include in the statement of disputes one or more disputes not identified as unresolved in the benefit review officer's report. The hearing officer will allow such amendment only on a determination of good cause.

It is undisputed that there was no response from the carrier to the BRC report and that the claimant did not consent to amending the extent-of-injury issue. There is no evidence that the carrier requested the extent-of-injury issue be amended prior to the beginning of the October 3, 2013, CCH. We review the hearing officer's ruling to add or modify an issue on an abuse-of-discretion standard, that is, whether the hearing officer acted without reference to any guiding rules or principles. Appeals Panel Decision (APD) 031719, decided August 11, 2003, *Morrow v. H.E.B., Inc.*, 714 S.W.2d 297 (Tex. 1986). Ignorance of the law does not excuse the failure to raise an issue at the BRC. APD 94253, decided April 18, 1994. The hearing officer in this case did not abuse his discretion in refusing to amend the extent-of-injury issue.

DATE OF INJURY

The hearing officer's determination that the date of injury is [date of injury], is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], extends to a ganglion cyst is supported by sufficient evidence and is affirmed.

The hearing officer also determined that the compensable injury of [date of injury], extended to left volar carpi radialis tenosynovitis. Under the circumstances of this case the condition of left volar carpi radialis tenosynovitis is a condition that requires expert evidence to establish a causal connection with the compensable injury. See *City of Laredo v. Garza*, 293 S.W.3d 625 (Tex. App.-San Antonio 2009, no pet.) citing *Guevara v. Ferrer*, 247 S.W.3d 662 (Tex. 2007).

In APD 110054, decided March 21, 2011, the Appeals Panel stated that "[a]lthough the claimed conditions are listed in the record, there is not any explanation of causation for the claimed conditions in the record. We hold that in this case the mere recitation of the claimed conditions in the medical records without attendant explanation

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.” In APD 120041, decided March 12, 2012, the Appeals Panel stated “[w]hile the claimed conditions are all mentioned in various reports and diagnostic studies, there is insufficient medical evidence linking the claimed conditions to the compensable injury or explaining how the mechanism of the injury caused the claimed conditions.”

In this case, left volar carpi radialis tenosynovitis is mentioned in medical reports in evidence; however, there is insufficient medical evidence linking this condition to the compensable injury or explaining how the claimant’s compensable injury caused this condition. The claimant relied upon two letters of causation from [Dr. VW] to establish causation of this condition. The first letter is dated July 5, 2012, and in it Dr. VW stated that the mechanism of injury “could have caused the problem with the wrist and hand being strained in pushing enough to cause a tendonitis and secondary cyst.” The second letter is dated July 31, 2012. In this letter Dr. VW mentioned that “synovitis/tenosynovitis” was diagnosed, that he saw the claimant for left volar carpi radialis tendonitis, and that the claimant had this condition. However, Dr. VW offered no explanation of how the compensable injury caused left volar carpi radialis tenosynovitis. The record does not contain any other medical records offering an explanation of causation between the compensable injury and the specific condition of left volar carpi radialis tenosynovitis.

As there are no medical records, including those of Dr. VW, that explain how the compensable injury caused left volar carpi radialis tenosynovitis, we reverse the hearing officer’s determination that the compensable injury of [date of injury], extends to left volar carpi radialis tenosynovitis, and we render a new decision that the compensable injury of [date of injury], does not extend to left volar carpi radialis tenosynovitis.

SUMMARY

We reform the hearing officer’s decision to show that Carrier’s Exhibit H was admitted into evidence.

We affirm the hearing officer’s determination that the date of injury is [date of injury].

We affirm the hearing officer’s determination that the compensable injury of [date of injury], extends to a ganglion cyst.

We reverse the hearing officer’s determination that the compensable injury of [date of injury], extends to left volar carpi radialis tenosynovitis, and we render a new

decision that the compensable injury of [date of injury], does not extend to left volar carpi radialis tenosynovitis.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201-4234.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge