

APPEAL NO. 150035  
FILED FEBRUARY 25, 2015

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 8, 2014, with the record closing on November 24, 2014, in Austin, 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 shoulder rotator cuff tear and supraspinatus tear; (2) the employer did not tender a bona fide offer of employment (BFOE) to the respondent (claimant) and the appellant (carrier) is thereby not entitled to adjust the post-injury weekly earnings; (3) the claimant had disability due to the [Date of Injury], compensable injury from November 23, 2013, through the present; and (4) the claimant had good cause for failing to attend a post-designated doctor required medical examination (RME) on July 10, 2014, with (Dr. O) and the carrier is not entitled to suspend payment of temporary income benefits (TIBs) from July 10 through August 11, 2014.

The carrier appeals the hearing officer's determinations of disability and that the compensable injury extends to a right shoulder rotator cuff tear and supraspinatus tear. The carrier contends in part that the evidence showed that the claimant sustained an intervening new injury occurring on March 25, 2014. The claimant responded, urging affirmance of the disputed determinations.

The hearing officer's determination that the employer did not tender a BFOE to the claimant and the carrier is thereby not entitled to adjust the post-injury weekly earnings and that the claimant had good cause for failing to attend a post-designated doctor RME on July 10, 2014, with Dr. O and the carrier is not entitled to suspend payment of TIBs from July 10 through August 11, 2014, were not appealed and have become final pursuant to Section 410.169.

## DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [Date of Injury], which includes a left shoulder sprain/strain. The claimant testified that he injured his left shoulder while pulling hoses in the course and scope of his employment. In evidence was an MRI of the claimant's left shoulder dated December 16, 2013, that gave as an impression in part: partial thickness, near-complete full width articular surface rim-rent tears of the supraspinatus, supscapularis and teres minor tendons and full thickness, partial width tear of the supraspinatus tendon.

## **DISABILITY**

The hearing officer's determination that the claimant had disability due to the [Date of Injury], compensable injury from November 23, 2013, through the CCH is supported by sufficient evidence and is affirmed.

## **EXTENT OF INJURY**

The Benefit Review Conference (BRC) Report certified the extent of injury in dispute as follows: "[d]oes the compensable injury of [Date of Injury], extend to and include right shoulder rotator cuff tear, supraspinatus tear, osteoarthritis, and tendonosis?" At the CCH, the parties agreed to modify the extent-of-injury issue and noted that the BRC report incorrectly identified the injured shoulder as the right shoulder. The hearing officer correctly noted in his decision and order that the parties agreed to revise the extent-of-injury issue as follows: "[d]oes the compensable injury of [Date of Injury], extend to and include a left shoulder rotator cuff tear and supraspinatus tear?" The hearing officer noted in his discussion that the claimant's treating doctor attributed both of these conditions to the work activities of [Date of Injury], which the doctor described accurately in his narrative report. The hearing officer further stated that the evidence put forth by the claimant in this case was more compelling and persuasive than that proffered by the carrier.

The hearing officer's finding that the compensable injury of [Date of Injury], caused or aggravated a left shoulder rotator cuff tear and supraspinatus tear was supported by sufficient evidence. However, in Conclusion of Law No. 3, the hearing officer determined that the compensable injury of [Date of Injury], extends to a right shoulder rotator cuff tear and supraspinatus tear. The hearing officer also made a determination regarding the claimant's right shoulder in the Decision portion of his Decision and Order as well as the initial section titled "Decision and Order." No evidence was provided at the CCH that the claimant had an injury to his right shoulder. Accordingly, we reverse the hearing officer's determination that the compensable injury of [Date of Injury], extends to a right shoulder rotator cuff tear and supraspinatus tear. We render a new decision that the compensable injury of [Date of Injury], extends to a left shoulder rotator cuff tear and supraspinatus tear to conform to the evidence presented at the CCH and the finding of fact made by the hearing officer.

## **SUMMARY**

We affirm the hearing officer's determination that the claimant had disability due to the [Date of Injury], compensable injury from November 23, 2013, through the CCH.

We reverse the hearing officer's determination that the compensable injury of [Date of Injury], extends to a right shoulder rotator cuff tear and supraspinatus tear and

render a new decision that the compensable injury of [Date of Injury], extends to a left shoulder rotator cuff tear and supraspinatus tear.

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

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3232.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge