

APPEAL NO. 150399  
FILED APRIL 27, 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 December 18, 2014, in Fort Worth, 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 right shoulder full thickness rotator cuff tear, supraspinatus tear, rotator cuff derangement, and labral tear; (2) the respondent (claimant) has not reached maximum medical improvement (MMI); (3) since the claimant has not reached MMI, no impairment rating (IR) can be assigned at this time; (4) the claimant has had disability resulting from the compensable injury, beginning on March 7, 2014, and continuing through May 15, 2014, and beginning on

October 14, 2014, and continuing through the December 18, 2014, CCH; however, the claimant did not have disability as a result of the compensable injury from December 21, 2013, and continuing through January 20, 2014.

The appellant (self-insured) appealed the hearing officer's extent of injury, MMI, IR determinations and that portion of the disability determination that was favorable to the claimant. The self-insured contends on appeal that the hearing officer's determinations are against the great weight and preponderance of the evidence. The appeal file does not contain a response from the claimant. That portion of the hearing officer's determination that the claimant did not have disability as a result of the compensable injury from December 21, 2013, and continuing through January 20, 2014, has not been appealed and has become final pursuant to Section 410.169.

**DECISION**

Affirmed in part and reversed and rendered in part.

The claimant testified that she was injured while working on an assembly line using an air-powered tool to install bolts with her right hand, the tool jerked backwards causing her right arm to be thrown back. The claimant testified that she heard a pop to her arm and felt shoulder pain. It is undisputed that the claimant sustained a compensable injury on [Date of Injury]. The parties stipulated that the compensable injury includes at least a right shoulder myofascial strain.

An MRI of the right shoulder dated November 26, 2013, showed an impression of supraspinatus thin bursal sided partial tear. The parties also stipulated that (Dr. C) was the designated doctor for MMI, IR and extent of injury. For the purpose of determining extent of injury, Dr. C examined the claimant on June 14, 2014, and opined that the

claimant's mechanism of injury caused a partial rotator cuff tear, supraspinatus tear, rotator cuff derangement, and sprain/strain to the right shoulder.

The medical records show that the claimant underwent conservative treatment for her right shoulder, including physical therapy and medication. In evidence is a medical report from (Dr. L) dated May 8, 2014, in which he recommends right shoulder surgery to repair the claimant's right shoulder partial rotator cuff tear. The claimant underwent a rotator cuff tear repair surgery on October 15, 2014. In evidence is an operative report dated October 15, 2014, from Dr. L that lists the pre-operative diagnoses as a partial thickness rotator cuff tear and impingement syndrome to the right shoulder; however, he lists the post-operative diagnoses as a full thickness rotator cuff tear, impingement syndrome, glenohumeral synovitis, and labral tear to the right shoulder. Dr. L states that the surgical findings showed that "[t]here was a 2-cm full-thickness tear of the supraspinatus tendon without significant retraction." The MRI of the right shoulder showed an impression of a partial thickness rotator cuff tear, however during the right shoulder surgery, Dr. L found and documented that the rotator cuff tear was a full thickness rotator cuff tear, rather than a partial thickness rotator cuff tear. We note that the extent-of-injury condition in dispute is a right shoulder full thickness rotator cuff tear. A few days after the claimant's right shoulder rotator cuff repair surgery, Dr. C examined the claimant on October 25, 2014, and certified that the claimant had not reached MMI because of the right shoulder surgery.

### **EXTENT OF INJURY**

The hearing officer's determination that the compensable injury of [Date of Injury], extends to right shoulder full thickness rotator cuff tear, supraspinatus tear, and rotator cuff derangement are supported by sufficient evidence and are affirmed.

Also, the hearing officer determined that the compensable injury of [Date of Injury], extends to a labral tear. 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 (APD) 022301, decided October 23, 2002. See also *City of Laredo v. Garza*, 293 S.W.3d 625 (Tex. App.-San Antonio 2009, no pet.) citing *Guevara*.

The hearing officer states in the Discussion portion of his decision that the claimant points to Dr. L's operative report to establish the causal link between the compensable injury and the labral tear. The hearing officer explains that Dr. L found a

labral tear during the right shoulder surgery on October 15, 2014, which was not visible in the MRI of the right shoulder on November 26, 2013. The operative report from Dr. L dated October 15, 2014, first mentions that the “labrum” was debrided and lists as a post-operative diagnosis a labral tear. The operative report and subsequent medical reports dated October 16, 2014, and October 30, 2014, from Dr. L do not explain how the compensable injury caused the claimant’s labral tear.

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.” Under the facts of this case, a labral tear is a condition that is a matter beyond common knowledge or experience and requires expert medical evidence. In this case, none of the medical reports, including Dr. L’s, causally link the labral tear to the compensable injury.

Because there is no explanation of how the compensable injury caused a labral tear, the hearing officer’s determination that the compensable injury of [Date of Injury], extends to a labral tear is not supported by the evidence. We therefore reverse that portion of the hearing officer’s determination that the compensable injury of [Date of Injury], extends to a labral tear, and we render a new decision that the compensable injury of [Date of Injury], does not extend to a labral tear.

### **MMI AND IR**

As previously mentioned, on October 15, 2014, the claimant underwent right shoulder surgery to repair a rotator cuff tear. A few days later, Dr. C examined the claimant on October 25, 2014, and certified on October 29, 2014, that the claimant had not reached MMI and no IR was assigned. Dr. C stated in his narrative report that the claimant had undergone reconstruction of a rotator cuff on October 15, 2014, a week prior to his examination, and that the claimant was unable to perform range of motion because the right shoulder was immotile. Dr. C opined that the claimant was not at MMI because the claimant was “postoperative day number 10 status post arthroscopic repair of partial-thickness supraspinatus tendon repair. Post-op physical therapy/occupational therapy is appropriate treatment.” As previously mentioned, Dr. L’s pre-surgery diagnosis was partial rotator cuff tear of the right shoulder however, during the right shoulder surgery, Dr. L found and documented that the rotator cuff tear of the right shoulder was a full thickness rotator cuff tear, rather than a partial thickness rotator cuff tear. The hearing officer determined, and we have affirmed in this decision, that the

claimant's compensable injury extends to a right shoulder full thickness rotator cuff tear. In determining whether the claimant reached MMI, Dr. C considered the claimant's right shoulder surgery and pending therapy in opining that the claimant had not reached MMI.

The hearing officer's finding that Dr. C's October 29, 2014, certification that the claimant had not reached MMI is not contrary to the preponderance of the evidence and is supported by sufficient evidence. Accordingly, the hearing officer's MMI and IR determinations that the claimant has not reached MMI, and since the claimant has not reached MMI, no IR can be assigned at this time, are supported by sufficient evidence and are affirmed.

### **DISABILITY**

The hearing officer's determinations that the claimant has had disability resulting from the compensable injury, beginning on March 7, 2014, and continuing through May 15, 2014, and beginning on October 14, 2014, and continuing through the December 18, 2014, CCH are supported by sufficient evidence and are affirmed.

### **SUMMARY**

We affirm the hearing officer's determination that the compensable injury of [Date of Injury], extends to right shoulder full thickness rotator cuff tear, supraspinatus tear, and rotator cuff derangement.

We reverse the hearing officer's determination that the compensable injury of [Date of Injury], extends to a labral tear, and we render a new decision that the compensable injury of [Date of Injury], does not extend to a labral tear.

We affirm the hearing officer's MMI and IR determinations that the claimant has not reached MMI, and since the claimant has not reached MMI, no IR can be assigned at this time.

We affirm the hearing officer's determinations that the claimant has had disability resulting from the compensable injury, beginning on March 7, 2014, and continuing through May 15, 2014, and beginning on October 14, 2014, and continuing through the December 18, 2014, CCH.

The true corporate name of the insurance carrier is **GENERAL MOTORS, L.L.C. (a certified self-insured)** 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 78701-3218.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge