

APPEAL NO. 100786-s
FILED AUGUST 3, 2010

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 May 18, 2010. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent's (claimant) compensable injury of _____, extends to right carpal tunnel syndrome (CTS); the compensable injury of _____, does not extend to right brachial neuritis, right Parsonage Turner syndrome, or left CTS; and that the respondent/cross-appellant (carrier) has not waived its right to dispute the alleged compensability of the claimant's right brachial neuritis, right Parsonage Turner syndrome, or bilateral CTS. Both parties appeal. The carrier appealed the hearing officer's determination that the claimant's _____, compensable injury extends to traumatic right CTS. The appeal file does not contain a response from the claimant to the carrier's appeal. The claimant cross-appealed the hearing officer's determination that the carrier did not waive its right to dispute the alleged extent-of-injury conditions and the hearing officer's determination that the compensable injury does not extend to right brachial neuritis, right Parsonage Turner syndrome, or left CTS. The carrier responded, urging affirmance of the determinations disputed by the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

It is undisputed that the claimant sustained a compensable injury on _____. The claimant testified that he injured his right hand when a co-worker "ran" a 12 inch drill bit through his hand while they were drilling and that the drill went all the way through his right hand, causing a penetrating injury. The claimant immediately sought treatment and was given a tetanus shot. His wound was cleaned and he was prescribed medications. The claimant testified that he returned to work the following day. The claimant began having problems of pain and numbness in his right upper extremity in September of 2009.

WAIVER

The hearing officer's determination that the carrier has not waived its right to dispute the alleged compensability of the claimant's right brachial neuritis, right Parsonage Turner syndrome, or bilateral CTS is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

That portion of the hearing officer's determination that the claimant's compensable injury of _____, does not extend to right brachial neuritis, right

Parsonage Turner syndrome, or left CTS is supported by sufficient evidence and is affirmed.

The hearing officer found that the claimant sustained right CTS as a natural and direct result of his compensable injury of _____. In the Discussion portion of her decision and order the hearing officer stated that “[c]onsidering the mechanism of injury, it is logical to conclude that injured tissue in [the] [c]laimant’s right wrist would swell, causing pressure on the right radial nerve and consequent right [CTS].” Further, the hearing officer notes that the test results show that the claimant’s CTS is somewhat worse in his right hand than in his left. The conclusion that a puncture wound through the hand would cause CTS is a matter beyond common knowledge or experience and unlike repetitive trauma in this specific unusual situation would require expert medical evidence. See generally, Guevara v. Ferrer, 247 S.W.3d 662 (Tex. 2007).

The claimant underwent an EMG on October 5, 2009, which gave as an impression mild to moderate median neuropathy at the wrist CTS on the right. The EMG went on to state that the findings are consistent with a diagnosis of Parsonage Turner syndrome or idiopathic brachial plexopathy, which may be induced by the work-related injury to the right hand. As previously noted, the hearing officer determined that the compensable injury did not extend to Parsonage Turner syndrome or right brachial neuritis. A second EMG was performed on March 9, 2010, which noted that there is no progression of the mild to moderate median neuropathy at the wrist CTS on the right and noted mild CTS on the left. In a physical exam performed on December 8, 2009, the claimant was noted to have a negative carpal compression test. Other than the 2009 EMG results linking CTS to Parsonage Turner syndrome or idiopathic brachial plexopathy, no medical evidence was presented to link the claimant’s right CTS to the compensable injury. Given the facts of this case, the hearing officer’s determination that the compensable injury of _____, extends to right CTS is 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 the compensable injury of _____, extends to right CTS and render a new decision that the compensable injury of _____, does not extend to right CTS.

SUMMARY

We affirm the hearing officer’s determination that the carrier has not waived its right to dispute the alleged compensability of the claimant’s right brachial neuritis, right Parsonage Turner syndrome, or bilateral CTS.

We affirm that portion of the hearing officer’s determination that the claimant’s compensable injury of _____, does not extend to right brachial neuritis, right Parsonage Turner syndrome, or left CTS.

We reverse the hearing officer's determination that the compensable injury of _____, extends to right CTS and render a new decision that the compensable injury of _____, does not extend to right CTS.

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

**CINDY GHALIBAF
5221 NORTH O'CONNOR BOULEVARD, SUITE 400
IRVING, TEXAS 75039-3711.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge