

APPEAL NO. 101323-s
FILED NOVEMBER 8, 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 August 23, 2010. The sole disputed issue was:

Does the compensable injury of _____, extend to right shoulder impingement?

The hearing officer determined that the compensable injury of "_____" includes right shoulder impingement. The appellant (self-insured) appealed, contending that the disputed condition is not related to the compensable injury. The respondent (claimant) responded, urging affirmance.

DECISION

Reversed and rendered as reformed.

The parties stipulated that the claimant sustained a compensable injury on (date of injury). The claimant testified that while lifting clothing from a pallet and hanging them overhead, she felt pain in her right shoulder. The claimant is alleging the compensable injury includes right shoulder impingement. The self-insured contends that the compensable injury is limited to a right shoulder sprain/strain.

CLERICAL CORRECTION

We note that the extent-of-injury issue certified out of the benefit review conference lists the date of injury as (date of injury), and that the evidence all reflects that the date of the claimant's compensable injury was (date of injury), rather than _____, as reflected in several places throughout the hearing officer's Decision and Order. We reform the issue, Findings of Fact Nos. 1B, IC and 4, Conclusion of Law No. 3, and the Decision to state that the date of the claimant's compensable injury was (date of injury).

EXTENT OF INJURY

The claimant was seen by several doctors at (NHC). In a Work Status Report (DWC-73) dated July 30, 2008, one of the doctors at NHC diagnosed the claimant with lymphedema (edema due to accumulation of fluid) and released the claimant to return to work with a lifting/carrying restriction of no more than 15 pounds. Subsequently another doctor at NHC diagnosed the claimant with a strain of the rotator cuff capsule and released the claimant to work with a lifting/carrying restriction of no more than 10 pounds. That diagnosis and the lifting/carrying restriction was continued until August 15, 2008, when a doctor at NHC recommended an MRI of the right shoulder. An MRI

performed on August 19, 2008, included an impression of “[s]ignificant impingement from the acromioclavicular joint secondary to pannus formation.” Following the results of the MRI, the doctor at NHC diagnosed the claimant with only a strain of the rotator cuff capsule. In reports dated August 22 and September 5, 2008, a doctor at NHC recommended an orthopedic consult for impingement.

(Dr. V) was appointed as the designated doctor to determine if there was an injury resulting from the claimed incident. Dr. V, in a report dated October 29, 2008, recited the claimant’s medical history, noted the “[i]mpingement sign is positive” and diagnosed a cervical sprain and right shoulder sprain. Dr. V commented on whether an injury resulted from the claimed incident stating:

The only possible injury resulting from lifting clothes off a pallet at ground level and hanging them overhead on a rolling rack would be cervical sprain (not addressed in available medical records) and/or right shoulder sprain – which should have resolved (now 4 months post DOI). Right shoulder MRI (08/19/2008) revealed intact rotator cuff without effusion. AC joint impingement secondary to pannus formation is not a part of this injury. [Emphasis in the original.]

There is no medical evidence explaining how a right shoulder impingement is related to the compensable injury.

In Guevara v. Ferrer, 247 S.W.3d 662, 665 (Tex. 2007), the Texas Supreme Court reiterated the longstanding general rule that “expert testimony is necessary to establish causation as to medical conditions outside the common knowledge and experience of jurors.” Guevara went on further to state that “[c]ompetent proof of the relationship between the event sued upon and the injuries or conditions complained of has always been required.”

In this case, a designated doctor appointed to determine if an injury resulted from the claimed injury gave a medical opinion that a right shoulder impingement was not related to the compensable injury. The evidence reflects that no doctor diagnosed the claimant with right shoulder impingement. The doctors only listed the MRI findings under tests performed. The finding in the MRI of “significant impingement from the acromioclavicular joint secondary to pannus formation” without attendant explanation how this condition may be related to the compensable injury does not establish the condition is related to the compensable injury within a reasonable degree of medical probability.

We recognize that Appeals Panel Decision (APD) 023167, decided January 28, 2003, held that a shoulder impingement did not require expert medical evidence; however, in light of the court precedent in Guevara, supra, and City of Laredo v. Garza, 293 S.W.3d 625 (Tex. App.—San Antonio 2009, no pet.) we hold that APD 023167 is no longer controlling. There was no expert evidence in the instant case to establish causation as to a right shoulder impingement.

In reviewing a “great weight” challenge, we must examine the entire record to determine if: (1) there is only “slight” evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Accordingly, we reverse the hearing officer’s determination that the compensable injury of (date of injury), includes right shoulder impingement as being so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We render a new decision that the compensable injury of (date of injury), does not include a right shoulder impingement.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge