

APPEAL NO. 110054  
FILED MARCH 21, 2011

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 14, 2010. The hearing officer determined that: (1) the compensable injury of \_\_\_\_\_, extends to right shoulder internal derangement, right shoulder partial thickness rotator cuff tear with post-traumatic degenerative arthritis of the glenohumeral joint, articular surface partial thickness tears involving both the supraspinatus and infraspinatus tendons, tendinosis/tendinopathy of the subscapularis tendon, joint effusion, and acute exacerbation of degenerative changes but does not extend to aggravation of any other pre-existing conditions litigated at this CCH; (2) the respondent/cross-appellant (claimant) did not have disability resulting from an injury sustained on \_\_\_\_\_, from August 24 through October 27, 2010; and (3) the average weekly wage (AWW) is \$1,153.85. The appellant/cross-respondent (carrier) appeals the hearing officer's determinations regarding the extent of injury and the AWW. The claimant responded urging affirmance, but also filed a cross-appeal regarding the disability determination.

DECISION

Affirmed in part and reversed and rendered in part.

**DISABILITY AND AWW**

The hearing officer's determinations that the claimant did not have disability resulting from an injury sustained on \_\_\_\_\_, from August 24 through October 27, 2010, and that the claimant's AWW is \$1,153.85 are supported by sufficient evidence and are affirmed.

**EXTENT OF INJURY**

**Right Shoulder Internal Derangement and Acute Exacerbation of Degenerative Changes**

The hearing officer's determination that the compensable injury of \_\_\_\_\_, includes right shoulder internal derangement and acute exacerbation of degenerative changes but does not include aggravation of any other pre-existing conditions litigated at the CCH is supported by sufficient evidence and therefore affirmed.

**Remaining Extent-of-Injury Conditions**

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_.<sup>1</sup> On that date the claimant was changing a truck trailer tire, which the claimant testified weighed about 300 pounds. The claimant testified that he had to simultaneously pry the rubber tire off the wheel with a bar and bounce the rubber tire to remove it from the trailer, and as he did so hurt his right shoulder. The evidence reflected that the claimant had a prior right shoulder injury in (year) for which he had surgery in 1969.

The claimant testified that he did not seek medical treatment until March 2010 because he felt the pain would resolve on its own. He consulted a physician in March 2010 and was sent for a right shoulder MRI on March 11, 2010. The March 11, 2010, MRI revealed articular surface partial thickness tears involving both the supraspinatus and infraspinatus tendons; tendinosis/tendinopathy of the subscapularis tendon; several small loose bodies within the joint space; joint effusion; and advanced osteoarthritis. The claimant subsequently filed a workers' compensation claim.

A second right shoulder MRI was taken on May 17, 2010, and revealed subacromial and subcoracoid bursitis; tenosynovitis of the long head of the bicipital tendon; impingement syndrome manifested primarily by hypertrophic changes of the AC joint with moderate buttressing against the supraspinatus muscle and tendon, synovitis of the AC joint, subacromial ebunation, cystic degenerative changes at the greater and lesser tuberosities, and peritendinous inflammatory fluid; degenerative osteoarthritic changes with the presence of an intra-articular loose body and joint effusion;<sup>2</sup> and no evidence of partial or full thickness tear of the rotator cuff.

On July 13, 2010, the claimant was evaluated by (Dr. B), an orthopaedic surgeon. Dr. B noted acute exacerbation of degenerative changes in the right shoulder, and recommended a total right shoulder arthroplasty. In his July 13, 2010, initial evaluation Dr. B stated "[t]his acute exacerbation of his condition was precipitated by an on the job injury." A total shoulder arthroplasty was performed on October 19, 2010.

The Texas Department of Insurance, Division of Workers' Compensation appointed (Dr. V) as the designated doctor to determine, among other things, the claimant's extent of injury. Dr. V reviewed the medical records, including the March and May 2010 MRIs, and opined in her October 12, 2010, report that "[t]he extent of injury includes the strain/sprain of the left<sup>3</sup> shoulder along with internal derangement of same (multiple tendon tears, probable traumatic arthritis)." Dr. V also noted in her report the following diagnoses as compensable: "internal derangement of the right shoulder; right shoulder strain/sprain; rotator cuff tear, right shoulder; [and] traumatic arthritis, right shoulder." Dr. V did not provide any explanation as to how the compensable injury

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<sup>1</sup> We note the carrier appealed Finding of Fact No. 1C; however, the carrier stipulated on the record that the claimant sustained a compensable injury on \_\_\_\_\_.

<sup>2</sup> We note the MRI report states left shoulder joint effusion; however, that MRI was taken of the right shoulder, not the left shoulder.

<sup>3</sup> We note Dr. V incorrectly references the left shoulder in her opinion.

caused the conditions she listed as compensable, nor did Dr. V specifically discuss any of the other claimed conditions in her report.

On July 11, 2010, (Dr. J), a carrier peer review doctor, commented on the claimant's extent of injury, stating in his report of that date that the claimant's compensable injury is right shoulder sprain/strain, and that "in all medical probability, the degenerative [osteoarthritis] of the right shoulder was temporarily and possibly aggravated by the [mechanism of injury]." Dr. J further opined that "[t]he patient's current symptoms (right shoulder pain and LOM) and physical findings (tenderness, weakness and LOM) are related to the shoulder sprain/strain which temporarily and possibly aggravated the pre-existing [osteoarthritis] of the shoulder." Dr. J did not mention the March 11, 2010, MRI.

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 022301, decided October 23, 2002. See also Guevara v. Ferrer, 247 S.W.3d 662 (Tex. 2007). To be probative, expert testimony must be based on reasonable medical probability. City of Laredo v. Garza, 293 S.W.3d 625 (Tex. App.—San Antonio 2009, no pet.) citing Insurance Company of North America v. Meyers, 411 S.W.2d 710, 713 (Tex. 1966). Although 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 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). As none of the medical records or doctors' reports specifically explain how the compensable injury caused the claimed conditions other than the right shoulder internal derangement and acute exacerbation of degenerative changes, the hearing officer's determination that the \_\_\_\_\_, compensable injury includes those conditions is against the great weight and preponderance of the evidence.

We reverse the hearing officer's determination that the compensable injury of \_\_\_\_\_, extends to right shoulder partial thickness rotator cuff tear with post-traumatic degenerative arthritis of the glenohumeral joint; articular surface partial thickness tears involving both the supraspinatus and infraspinatus tendons; tendinosis/tendinopathy of the subscapularis tendon; and joint effusion 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 \_\_\_\_\_, does not include right shoulder partial thickness rotator cuff tear with

post-traumatic degenerative arthritis of the glenohumeral joint; articular surface partial thickness tears involving both the supraspinatus and infraspinatus tendons; tendinosis/tendinopathy of the subscapularis tendon; and joint effusion.

### **SUMMARY**

We affirm the hearing officer's determination that the claimant did not have disability resulting from an injury sustained on \_\_\_\_\_, from August 24 through October 27, 2010.

We affirm the hearing officer's determination that the AWW is \$1,153.85.

We affirm the hearing officer's determination that the compensable injury of \_\_\_\_\_, includes right shoulder internal derangement and acute exacerbation of degenerative changes but does not include any other pre-existing conditions litigated at the CCH.

We reverse the hearing officer's determination that the compensable injury of \_\_\_\_\_, includes right shoulder partial thickness rotator cuff tear with post-traumatic degenerative arthritis of the glenohumeral joint; articular surface partial thickness tears involving both the supraspinatus and infraspinatus tendons; tendinosis/tendinopathy of the subscapularis tendon; and joint effusion, and render a new decision that the compensable injury of \_\_\_\_\_, does not include right shoulder partial thickness rotator cuff tear with post-traumatic degenerative arthritis of the glenohumeral joint; articular surface partial thickness tears involving both the supraspinatus and infraspinatus tendons; tendinosis/tendinopathy of the subscapularis tendon; and joint effusion.

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

**RON O. WRIGHT, PRESIDENT  
6210 HIGHWAY 290 EAST  
AUSTIN, TEXAS 78723.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cynthia A. Brown  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge