

APPEAL NO. 201110  
FILED SEPTEMBER 24, 2020

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 July 2, 2020, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the sole disputed issue by determining that the compensable injury of (date of injury), does not extend to right shoulder full thickness tear of the supraspinatus, right shoulder low grade tear of the infraspinatus, right shoulder low grade tear of the subscapularis, right shoulder subdeltoid bursitis, or right shoulder acromioclavicular arthrosis. The appellant (claimant) appealed the ALJ's determination. The respondent (self-insured) responded, urging affirmance of the ALJ's determination.

DECISION

Reversed and remanded.

The parties stipulated, in part, that (Dr. W) was the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) on the issue of the extent of the claimant's injury, and that the self-insured (we note the decision identifies the self-insured as "carrier") has accepted a right shoulder sprain, right shoulder strain, and a left knee contusion as components of the compensable injury. The claimant testified she injured her right shoulder and left knee when she slipped and fell.

The ALJ determined that the compensable injury does not extend to the claimed conditions. The ALJ stated her rationale in the discussion portion of her decision as follows:

According to [Dr. W], the disputed conditions . . . are associated with pre-existing degenerative changes. Treating doctor, [Dr. G], provided an opinion that is consistent with that of the designated doctor. [Dr. G] stated that the rotator cuff tear, right shoulder low grade tear of the infraspinatus, and subdeltoid bursitis are pre-existing conditions and were not caused or aggravated by the work injury.

\*\*\*\*\*

[Dr. W] based his opinion on evidence-based medicine and his opinion is not contrary to the other evidence. The compensable injury does not extend to or include any of the disputed conditions.

In evidence are medical records from Dr. G. The medical records from Dr. G establish he did not believe the compensable injury extended to the disputed conditions. Also, in evidence is a medical record from Dr. W, which reflects that Dr. W examined the claimant on December 19, 2019, to opine on whether the compensable injury extended to the disputed conditions. Dr. W states in his narrative report that he found the compensable injury does not extend to a low grade tear of the infraspinatus, a low grade tear of the subscapularis, or acromioclavicular arthrosis. However, Dr. W also clearly states in his report that the compensable injury does extend to a right shoulder supraspinatus full-thickness tear and subdeltoid bursitis.

The ALJ's statements that Dr. W opined the disputed conditions are associated with pre-existing degenerative changes, and that Dr. G's opinion that the compensable injury does not extend to the claimed conditions is consistent with Dr. W's opinion are misstatements of the evidence. While the ALJ can accept or reject in whole or in part Dr. W's opinion, the ALJ's decision in this case is based in part on misstatements of the medical evidence in the record. Accordingly, we reverse the ALJ's determination that the compensable injury does not extend to right shoulder full thickness tear of the supraspinatus, right shoulder low grade tear of the infraspinatus, right shoulder low grade tear of the subscapularis, right shoulder subdeltoid bursitis, or right shoulder acromioclavicular arthrosis, and we remand the issue of whether the compensable injury extends to right shoulder full thickness tear of the supraspinatus, right shoulder low grade tear of the infraspinatus, right shoulder low grade tear of the subscapularis, right shoulder subdeltoid bursitis, and right shoulder acromioclavicular arthrosis to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the ALJ is to correct the misstatements of Dr. W's report. The ALJ shall consider all of the evidence and make a determination whether the compensable injury extends to right shoulder full thickness tear of the supraspinatus, right shoulder low grade tear of the infraspinatus, right shoulder low grade tear of the subscapularis, right shoulder subdeltoid bursitis, and right shoulder acromioclavicular arthrosis.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

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

**CEO ESMAEIL PORSA, MD  
HARRIS HEALTH SYSTEM  
2525 HOLLY HALL, SUITE 100  
HOUSTON, TEXAS 77054.**

---

Carisa Space-Beam  
Appeals Judge

CONCUR:

---

Cristina Beceiro  
Appeals Judge

---

Margaret L. Turner  
Appeals Judge