APPEAL NO. 92553

On September 2, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The hearing officer determined that the claimant, (claimant), who is the appellant, did not sustain an injury to his wrist and thumb in the course and scope of his employment with (employer). The hearing officer found that, as to the undisputed compensable injury to his knee that occurred (date of injury), he had reached maximum medical improvement (MMI) on May 11, 1992, with a whole body impairment sustained as a result of this injury of 6%. The hearing officer adopted the report of the designated doctor, and found that the great weight of other medical evidence was not to the contrary.

The claimant appeals, asking generally for a review of the decision. At the hearing, the claimant contended that his whole body impairment rating should be 15%, and that his wrist and thumb were injured when he fell at home because of his unsteady injured knee. No response was filed by the carrier.

DECISION

After reviewing the record, we affirm the determination of the hearing officer.

The claimant injured his right knee on (date of injury), while working for the employer as a material handler. He voluntarily resigned from the employer January 24, 1992.

The claimant has had two surgeries on his knee. His first treating doctor was (Dr. BO). The claimant told him that Dr. BO indicated that he would have to live with pain in his knee. Dr. BO completed a TWCC-69 Report of Medical Evaluation, certifying that the claimant reached MMI on January 24, 1992, with a 2% whole body impairment rating.

The claimant was not satisfied with this, and consulted a second doctor after notifying the Texas Workers' Compensation Commission. This doctor, (Dr. JB), completed a TWCC-69 finding that the claimant had reached MMI on April 30, 1992, and assigning a 15% whole body impairment rating. However, a portion of the form also attributes the 15% impairment to the knee. A letter from Dr. JB dated April 10th also states that claimant has a 15% impairment to the knee. The record does not contain any response that Dr. JB may have made to the carrier's request for clarification of the rating.

As a result of the dispute between the two doctors, the Commission designated a doctor, (Dr. W), who completed a TWCC-69 assessing 15% impairment to the right knee, which translated into a 6% whole body impairment rating, and finding MMI effective May 11, 1992. None of the doctors assessed any impairment to the claimant's injuries to the wrist and his thumb.

The claimant said that he fell in his home October 25, 1991, while doing his exercises suggested by Dr. BO. One of these suggested exercises, he said, was walking around, and, during this, his knee gave out on him, and he injured his right wrist. He injured his left

thumb on May 15, 1992, in another fall at his residence, and this time attempted to catch himself with his left hand because his right wrist was already injured. The claimant feels that both injuries are also compensable because they occurred as a result of his bad knee, and they also prevent him from working.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

The claimant admits that his wrist and thumb injuries occurred at home. He was not engaged in an activity that furthered the business of his employer. Workers' compensation is due for an "injury" that occurs in the course and scope of employment. Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. Art. 8308-1.03(10); 8308-3.01 (Vernon's Supp. 1992) (1989 Act). The definition of injury includes infections or diseases that naturally result from the damage or harm done to the physical structure of the body. Art. 8308-1.03(27). This concept was a part of the former compensation law; in construing the meaning of the word "naturally", the Court of Civil Appeals in the case of Maryland Casualty Co. v. Rogers, 86 S.W.2d 867 (Tex. Civ. App.-Austin 1935, writ ref'd), stated: "By the word `naturally', as used in the statute, it is not meant that the disease which is shown to have attacked the victim of the accident is such disease as usually and ordinarily follows the accident; but it is only meant that the injury or damage caused by the accident is shown to be such that it is natural for the disease to follow therefrom, considering the human anatomy and the structural portions of the body in their relations to each other." *Id*. at 871. However, the fact that an injury may affect a person's resistance will not mean that a subsequent injury outside the work place is compensable, where the subsequent disease or infection is not one which flowed naturally from the compensable injury. *See* Traders & General Insurance Co. v. Keahey, 119 S.W.2d 618 (Tex. Civ. App.-Amarillo 1938, writ dism'd). It appears that the claimant's theory of recovery may have been that his injuries to his wrist and thumb were compensable as part of the original injury because they occurred during medical treatment of his knee. *See* Western Casualty & Surety Co. v. Gonzales, 506 S.W.2d 303 (Tex. Civ. App.-Corpus Christi 1974), *aff'd,* at 518 S.W.2d 524 (Tex. 1975).

We agree with the hearing officer's determination that the wrist and thumb injuries were not compensable. We cannot find error with her findings that such injuries were not themselves in the course and scope of employment, and did not result directly from medical treatment or from disease or infections that flowed naturally from the knee injury. "Impairment" is defined in the 1989 Act in terms of anatomic or functional abnormality resulting from a compensable injury. Art. 8308-1.03(24). Consequently, any impairment resulting from the wrist or thumb, wholly independent of the affected and compensable knee injury, were properly not included in the impairment ratings of the doctors in this case.

Disputes about impairment ratings are resolved, in the 1989 Act, through appointment of a designated doctor. The Legislature has directed that the report of the

commission-appointed designated doctor has presumptive weight as to impairment rating, and that doctor's impairment rating must be adopted unless the great weight of medical evidence is to the contrary. 1989 Act, Art. 8308-4.26(g). Testimony of the claimant alone does not constitute medical evidence that can overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92164 (decided June 5, 1992). In the case here, the hearing officer's determination to give the designated doctor's report presumptive weight is fully supported by the record. The only medical evidence weighing against that report is from Dr. JB, and, even then, it can be inferred that Dr. JB assessed the same rating as Dr. W, and merely failed to properly translate the knee impairment into a whole body impairment rating, notwithstanding the fact that he recorded 15% also as a "whole body" rating where he was asked to fill in that space on the TWCC-69 Form.

The decision of the hearing officer is affirmed.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Philip F. O'Neill
Appeals Judge