

APPEAL NO. 93414

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, on April 29, 1993, (hearing officer) presiding as hearing officer. He determined that the respondent's (claimant) (date of injury), compensable right knee injury caused her current injuries to her back and left knee because her right knee injury caused her to alter the biomechanics of her gait, which placed additional pressures on her back and other knee. Appellant (carrier), who is a self-insured political subdivision, appeals urging that the hearing officer's finding is against the great weight and preponderance of the evidence and that the hearing officer "improperly disregarded (carrier's) evidence which demonstrates that Claimant's left knee and back injuries were unrelated to her compensable right knee injury." Claimant states that her evidence from her doctor supports the relationship of the injuries and asks that the decision be affirmed.

DECISION

Finding sufficient evidence to support the hearing officer's decision and that it is not erroneous as a matter of law, the decision is affirmed.

This case involves the matter of an injury or injuries following on or resulting from an undisputed, compensable injury. Succinctly, the claimant was the cafeteria manager for the (School) (ISD), when, on April 9, 1991, she slipped on a wet floor and severely twisted her right knee. She ultimately had surgery performed on the right knee in June 1991, underwent therapy and returned to work (against her doctor's desires according to her testimony) at the beginning of the school year in August 1991. She continued to have problems with her right knee and because of having to walk differently to favor that knee, she developed swelling in her left knee and pain in her back. This condition grew worse until she was no longer able to work in April 1992, and her doctor took her off work. She wore braces on her knees and back as prescribed by her doctor and returned to work on August 3, 1992. She testified she had no knee or back problems prior to the accident of April 9, 1991. The claimant introduced a medical record from her treating doctor, an orthopaedic surgeon, dated "4/15/92" which states in part:

Her left knee is bothering her now. Her back is bothering her. She has swelling in the knee and it is catching some as is her left knee now. They both swell. They both hurt. They both have mechanical symptoms, right worse than the left. Her back is now giving way and I think that her left knee and her backache is directly related to the right knee problem. . . .

and a statement dated March 24, 1993 which provides as follows:

There has been some question raised as far as the connection of the back and left knee to the right knee

It is my opinion that the back is connected to the right knee because of the abnormal gait. Yes, she did have some pre-existing degenerative disk disease but this abnormal biomechanics aggravated it.

As far as the left knee, she had to favor the right knee so much it put additional stress on the left knee and in that way both the left knee and back are related to the original injury.

The carrier introduced into evidence a "clinical review" report from "Health Benefit Management" and which is signed by (BP), R.N., B.S.N., as "Audit Consultant." This report states:

In the opinion of the medical reviewer (not further identified), complaints of the left knee and back, which the patient voiced on April 15, 1992, are totally unrelated to the original alleged work injury of April 9, 1991. The original description of the work injury indicates that the patient twisted her right knee; there is no reference to an injury to the left knee, and the patient had a symptom-free interval of approximately one year before complaints started of the left knee and back. Therefore the complaints of the left knee and back are unrelated to the alleged injury, and not the responsibility of the carrier.

The hearing officer specifically mentions this report in his Decision and Order. Consequently, we are at a loss as to the carrier's assertion in its appeal that "the Hearing Officer improperly disregarded Appellant's evidence" and find no basis to grant any relief. Quite apparently, the hearing officer assessed greater weight and credibility to the report of the claimant's treating doctor than to the report submitted by the carrier, which is rather nebulous in indicating whose opinion is being reflected in the report. Article 8308-6.34(e) establishes that the hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Where there is conflicting evidence, he resolves the conflicts. Texas Workers' Compensation Commission Appeal No. 92234, decided August 13, 1992. We clearly cannot say that there was not sufficient evidence to support his decision nor can we conclude that his determination was so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. See Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

The facts in this case give rise to the situation where there is an occurrence of a follow-on injury related to an original injury. In Texas Workers' Compensation Commission Appeal No. 92538, decided November 25, 1992, we cited the opinion expressed in Maryland Casualty Co. v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, aff'd per curiam, 432 S.W.2d 515 (Tex.1968)) which stated:

The law is well settled that where an employee sustains a specific compensable injury, he is not limited to compensation allowed for that specific injury if such injury, or proper or necessary treatment therefore, causes other injuries which render the employee incapable of work.

We believe the logic and rationale behind that decision applies here. In Sosa, *supra*, the claimant sustained a compensable injury to his left wrist which required a cast, first a more expansive cast followed by a "short arm" cast. The cast remained on his arm for an extended period of time. The claimant subsequently complained of shoulder pain (adhesions had developed) which was apparently caused by the lack of use of the arm resulting from the wrist injury and cast and not solely from voluntary nonuse. The Appeals Court upheld the jury finding for the claimant including the shoulder injury. The same legal rationale applies to this case, and as we have already indicated, there was a sufficient factual basis to support the hearing officer's decision. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Joe Sebesta
Appeals Judge