

APPEAL NO. 93574

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01-11.10 (Vernon Supp. 1993) (1989 Act). A contested case hearing was held in (city), Texas, on June 8, 1993, to determine the issue of whether the injuries to respondent's (hereinafter claimant) right knee and back are compensable. The appellant, hereinafter carrier, appeals the determination of hearing officer (hearing officer) that claimant's injuries to her right knee and back result directly from her medical treatment for her compensable injury, and are thus themselves compensable injuries. No response was filed by the claimant.

DECISION

Finding error in the hearing officer's decision, we reverse and render a decision that claimant's right knee and back injuries are not compensable as being the direct result of medical treatment received for a compensable left knee injury.

It was not disputed that claimant, who was employed by (employer), had suffered a compensable injury to her left knee on (date of injury), and that she had had a total knee replacement due to that injury. She testified that her doctor, (Dr. W), prescribed swimming as physical therapy post-surgery, and that carrier was paying for this. One day, after finishing her swim at the YWCA, claimant was leaving the shower when her knee slipped and buckled and she fell, hitting her back and ending up on the floor with her right knee bent under her.¹ She and her witness, IS, testified that her knee had buckled on many occasions since the surgery; however, claimant said that on those occasions she had always managed to catch herself.

Medical records from Dr. W prior to claimant's fall in the shower report knee discomfort and "giveness." On April 6, 1992 Dr. W wrote that claimant "has fallen on two occasions secondary to pain in the kneecap area and she is not exactly sure what the mechanism is but states that she has had a feeling of discomfort and the next thing she knows she is on the ground."

On November 11th Dr. W wrote in part of claimant's left knee and back discomfort and said she "states that the knee gave way secondary to the discomfort that she has been having and she fell at home. The falling in the shower was secondary to the knee giving way and the knee problems directly related to the injury that she sustained at work. The fall at home did exacerbate the symptomatology but the fall at home was secondary to the knee giving way because of the problems that she has had post total knee replacement"

On January 18, 1993, Dr. W wrote carrier that claimant had sustained lower back

¹On cross-examination the claimant said she did not slip in the sense of, "like I didn't, you know, feet fly out and everything," but that it was like "you feel like you're going to slip and I was trying to catch myself"

and right knee injuries (the latter most likely a medial meniscal tear), both of which were related to the instability of the left knee "secondary to the post traumatic arthritic changes." In a February 1st letter Dr. W again related the back and right knee injuries to the problem claimant had in the left knee.

The claimant said she had also seen (Dr. O), and three pages from what purports to be a report of Dr. O were admitted into evidence. That report references a medical evaluation by Dr. W which assesses "20% of the whole body" and "50% impairment to the lower extremities." It further states, "[p]atient has in addition sustained injuries to the back and right knee secondary to a fall, when the total knee replacement gave away (sic) because of the lateral subluxation of the patella and I feel that thos (sic) injuries are directly related to the Workmans' Compensation claim."

The carrier argued at the hearing and on appeal that the decision in Texas Workers' Compensation Commission Appeal No. 92553, decided November 30,1992, in which a claimant was denied compensation for injuries suffered when walking on the advice of his doctor, is controlling. The hearing officer stated, however, that this case is distinguishable in that this claimant would not have been engaged in exercise at the YWCA nor on the premises thereof if not for the prescription given by her treating doctor and paid for by carrier. "Claimant was at the YWCA as part of the medical treatment prescribed by her doctor and her injuries sustained there were the direct result of her medical treatment."

Appeal No. 92553, like this case, involved a claimant with a compensable knee injury who had had corrective surgery. Also in that case, the claimant fell when his knee gave way on him while he was walking around his house, and he injured his wrist. (He stated that he fell while doing walking exercises as suggested by his treating doctor.) On a second occasion he also fell while walking at home, and injured his thumb when he attempted to catch himself. The claimant's treating doctor had found he had reached MMI prior to the two falls; the designated doctor certified MMI, apparently after the first fall, but did not mention any injury other than the original, compensable injury.

In affirming the hearing officer's decision against that claimant, the Appeals Panel noted that the injuries to claimant's thumb and wrist occurred at home and not while he was engaging in activities that furthered the business of his employer. It also cited the statutory definition of "injury" as including infections or diseases that naturally result from the damage or harm to the physical structure of the body, and said that "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." The panel also agreed with the hearing officer's determination that the injury did not result from medical treatment of claimant's knee.

Courts have held the law "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." McAdams v. Fidelity and Casualty Company of New York, 406 S.W.2d 518 (Civ. App.-Houston 1966, writ ref'd n.r.e.). As the Supreme Court said in

Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524 (Tex. 1975), "[t]he site of the trauma and its immediate effects are not, however, necessarily determinative of the nature and extent of the compensable injury. The full consequences of the original injury, together with the effects of its treatment, upon the general health and body of the workman are to be considered." Id. at 526.

The carrier, however, disputes the hearing officer's finding and conclusion that claimant's back and right knee injuries result directly from her medical treatment, and it argues that at best claimant's slip following her exit from the shower at the YWCA was only an indirect result of the treatment prescribed by her doctor--an insufficient connection to justify a finding of compensability resulting from the slip.

We agree with the carrier, in that the evidence in this case indisputably shows that the injury to claimant's back and right knee arose from circumstances--i.e., claimant's fall while coming out of a shower--which did not constitute medical treatment for her original injury; no injury was alleged or proven to have occurred during the medical treatment (here, physical therapy) itself. Compare Texas Employers Indemnity Company v. Etie, 754 S.W.2d 806 (Tex. Civ. App. - Houston [1st. Dist.] 1988, no writ) (evidence supported conclusion that myelogram, which was necessary to treatment for employee's neck injury, aggravated preexisting lower back problems); Maryland Casualty Company v. Sosa, 425 S.W.2d 871 (Civ. App. - San Antonio 1968), writ ref'd n.r.e., 432 S.W.2d 515 (Tex. 1968) (placing employee's arm in cast as result of compensable injury, which caused restricted movements, resulted in development of adhesions in shoulder).

Under the foregoing analysis, we find error in the hearing officer's determination that the injuries to claimant's right knee and back are compensable as being the direct result of medical treatment she was receiving for her compensable left knee injury. We therefore reverse such decision and render a new decision that the claimant's right knee and back injuries are not compensable.

Lynda H. Neseholtz
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge