

APPEAL NO. 93725

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 19, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The issues to be resolved were: whether claimant had sustained an injury to her right hand as a result of her (date of injury), injury to her left hand; whether claimant had reached maximum medical improvement (MMI), and if so, claimant's correct whole body impairment rating. The hearing officer determined that claimant's compensable injury of (date of injury), had caused an injury to her right hand as well as her left hand, and that claimant had not yet reached MMI.

Appellant, carrier herein, contends that claimant's right hand carpal tunnel syndrome (CTS) is not related to her (date of injury), accident; that claimant reached MMI on February 5, 1993, and that claimant has a whole body impairment rating of five percent. Respondent, claimant herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is reversed, and an opinion rendered that claimant has reached MMI as to her compensable injury on (date), with a five percent impairment, according to the opinion of the designated doctor.

Claimant was injured when she received multiple cat bites on her left hand on (date of injury), while employed at (employer). Claimant stated she received immediate medical treatment but her wounds nevertheless became infected. She was seen by (Dr. E) who recorded claimant had developed "severe tenosynovitis cellulitis with increased tissue pressure involving the small muscles of the hand as well as the [CTS]." Claimant underwent hand surgery, with multiple incisions, on March 19th by Dr. E. The claimant is right-handed.

Claimant then went into physical therapy for range of motion exercises and grip strength. She stated she received a splint, whose purpose was to control the formation of scar tissue. The splint was described by the claimant as running from the first joint of her fingers to the elbow. There were no records, and no testimony, as to how long her hand was in the splint as a result of this first operation. An occupational therapy note dated April 6, 1992, stated that claimant entered the department with an ace bandage wrapped around her left hand. Claimant was released to light duty with restrictions on April 20, 1992.

A letter from Dr. E to the adjuster that is date-stamped June 22, 1992, stated that claimant had healed well from her operation, but that she had been complaining of tingling in the fingers of her left hand. Claimant received an EMG on May 13, 1992, which tested positive for CTS. Dr. E's letter opined that this resulted from scar tissue formation as a result of her infection. He opined that she would need an epineurectomy of the median nerve to release it; the letter expressed an intent to put claimant into a splint for 7-10 days thereafter.

Claimant had an operation for this condition on May 22, 1992. Dr. E's notes indicated that on May 27th, she was asymptomatic, and that she was resplinted at this time. On June 1st, his records show claimant being sent for splinting and occupational therapy.

Records of (Rehab) indicate that claimant had bi-weekly occupational therapy beginning June 15, 1992. The records from Rehab indicate increased left hand mobility and grip strength through October 13, 1992.

An EMG examination of the left upper extremity conducted August 18, 1992, stated that there continued to be compression of the median and ulnar nerves, with a deterioration compared to the May 13, 1992, test. Dr. E's pre-operative medical report of October 29, 1992, recorded an impression of recurrent carpal tunnel syndrome, left hand with a plan to do a ". . . median epineurectomy with bigraft." Operative procedure notes reflect that scar tissue again had caused compression. (There is no evidence that left hand CTS resulted from repetitive use). Thereafter, beginning November 30, 1992, claimant again went into occupational therapy at Rehab. As of December 15, 1992, she was put on hold because she failed to show up for four scheduled appointments. She was discharged December 29, 1992. The claimant testified that she did not feel that this group effectively treated her hand. She received physical therapy beginning December 8, 1992, from another clinic, involving massage, ultrasound, and kinetic exercises. By January 12, 1993, the clinic reported that she was slowly increasing in overall strength and range of motion. On February 25, 1993, physical therapy noted that she was that day "issued a wrist splint which will be suitable for her to use for work conditions."

Reference to claimant's right hand first shows up in a letter from Dr. E dated April 2, 1993, when it is noted that she had been seen in his office on March 17, 1993, and was at that time complaining of median nerve compression problems for about two-three month duration "probably because" she had been using her right hand more and favoring her left.

Dr. E completed a TWCC-69 Report of Medical Evaluation which stated that she had reached MMI April 1, 1993, with a 15% whole body impairment. A later undated memo (perhaps from Dr. E) indicated he believed she reached MMI on April 1, 1993, as to her left hand but that her right hand condition was not resolved. It appears that this report was dated prior to the date MMI was adjudged (in February 1993). On April 26, 1993, the Texas Workers' Compensation Commission wrote to the claimant indicating that there was a dispute over MMI and impairment, and scheduled her for an appointment with (Dr. T) on May 17, 1993. Dr. E was requested by a copy of that letter to forward his medical records to Dr. T.

Dr. T, whose narrative report indicated that he reviewed medical records of Dr. E, certified that claimant reached MMI on February 5, 1993, with a five percent whole body impairment. This was derived from assessment of her left extremity, taking into account

that her left hand was the "nonpreferred" extremity. In his assessment Dr. T remarks "[w]ith regard to her stated new right hand and wrist symptoms, I have no evidence that would indicate that this is a direct result of the cat bite injury."

The only medical evidence linking claimant's right hand CTS to her compensable injury are letters from Dr. E dated April 2nd and June 9th. The June 9th letter states: ". . . in all reasonable medical probability, the development of carpal tunnel on the right could be the result of overuse because of the recovery of the left side." Further in the letter, Dr. E again stated: ". . .the patient does have clinical carpal tunnel and again this could be secondary to overuse because of favoring."

Claimant testified that she had to rely solely on her right hand because her left hand was in a splint or cast to immobilize it, and that this overuse caused her to develop a ganglion cyst and CTS in her right hand. She did not testify that a splint had been on her left hand continuously, however. Witness statements tendered by claimant make no mention of a splint, but indicate that claimant used her right hand more because her left hand was weak and often uncontrollable. Claimant stated that when she saw Dr. T, the designated doctor, he was under the impression he was only to evaluate and render an opinion on her left hand. Claimant testified that Dr. E told her he had done all it was in his power to do for her left hand.

There is no doubt that claimant experiences pain from her right handed CTS, and we do not in this decision intend in any way to trivialize this. However, whether a compensable injury may be said to have extended to another body part not affected by the original accident at work must be grounded in the statutory definitions of injury and applicable case law. The hearing officer's determination is erroneous as a matter of law, and is further against the great weight and preponderance of the evidence.

Injury is defined by the 1989 Act, TEX. LAB. CODE ANN. § 401.011(26) (formerly Art. 8308-1.03(27)) as:

. . . damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. The term includes an occupational disease.

In addition, the Appeals Panel had recognized applicability of prior case law relating to compensability of injuries resulting from medical treatment instituted to cure the effects of the compensable injury. See Texas Workers' Compensation Commission Appeal No. 92538, decided November 25, 1992.

In Texas Workers' Compensation Commission Appeal No. 93414, decided July 5, 1993, we affirmed a hearing officer who found that a knee injury caused a subsequent back

injury by requiring the claimant to alter his gait. That case, however, involved not only a contention and evidence of "favoring" but proof of a physically altered gait directly caused by the injured knee. Moreover, the claimant's doctor in that case stated that there was a "direct" relationship between the gait and opposite knee and back problems. There was no contrary opinion from a doctor in that case.

We have not endorsed a blanket concept that brings within the ambit of compensable injury every consequence that arguably may not have occurred "but for" the compensable injury. Appeals Panel decisions directly in point include Texas Workers' Compensation Commission Appeal No. 92553, decided November 30, 1992, and the recent Texas Workers' Compensation Commission Appeal No. 93612, decided September 3, 1993. In Appeal No. 92553, the claimant sought to extend his injury to a wrist and thumb that had been injured when he fell at home due to his weakened compensable knee. We affirmed a denial of the claimed extension. In Appeal No. 93612, the claimant sought to receive compensation for methadone treatment of addiction to Tylenol #4. He presented a doctor's opinion that his addiction to Tylenol #4 and subsequent methadone treatment was "due to" the injury. We nevertheless held that, absent any evidence about the prescribed dose or use of this drug, there was insufficient evidence to prove that his addiction occurred as a result of necessary medical treatment for the compensable injury (as opposed to noncompliant use of prescription drugs).

In the case at hand, the hearing officer has made no finding that the right hand condition is a natural result of the bite to the left hand, nor does she indicate that it resulted from medical treatment to the left hand. Although she discusses the fact that claimant's hand was essentially "immobilized", there was no evidence that claimant's left hand was continuously immobilized. Moreover, evidence indicated that claimant's right hand CTS developed in 1993. The brace that was prescribed in February 1993 appears to have been a leather wrist brace designed to allow her to use the left hand, rather than to immobilize it.

We would also note that claimant's last two surgeries on her left hand were to treat, not the immediate cat bite, but the natural consequences and progression, of that bite. The CTS in the left hand did not occur at the moment the cat bit the claimant; it is, by contrast to the right hand CTS, a direct consequence of an injury which the legislature has expressly provided is part of the injury because it is a disease naturally resulting from the damage or harm.

The right hand CTS was found by the hearing officer to have resulted from claimant's "overuse" of her dominant hand. In the opinion of the majority herein, this is simply too remote to the initial injury, the cat bite, to bring it within the definition of injury or cast it as a consequence of required medical treatment. The hearing officer's theory is based upon Dr. E's letters. Notwithstanding his use of the term "medical probability," his letters are equivocal as to the connection the left hand. Dr. E's opinion is essentially the observation

that the right hand CTS may be "related to" the injured left hand but only in the sense that the opposite hand was then overused. It appears that the letters are evidence, not of a direct causal relationship, but of an independent, intervening cause, claimant's use of her right hand. Further, Dr. T apparently considered, and rejected, the theory that claimant's right handed condition was causally related to her compensable injury.

Professor Larson, in discussing the analysis of the range of compensable consequences in workers' compensation law, notes:

A distinction must be observed between causation rules affecting the primary injury. . . and causation rules that determine how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment. As to the primary injury, it has been shown that the "arising" test is a unique one quite unrelated to common law concepts of legal cause, and . . . the employee's own contributory negligence is ordinarily not an intervening cause preventing initial compensability. But when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of "direct and natural results" and of claimant's own conduct as an independent intervening cause." Larson's Workmen's Compensation Law, § 13.11.

The 1989 Act no longer has a distinction between specific injuries and general injuries as such, but prior case law involving arguments of "extension" a compensable injury are instructive. Texas Employers' Insurance Association v. Espinosa, 367 S.W.2d 667 (Tex. 1963), states that it is the claimant's burden to show that a specific injury "extended to and affected other portions of the body. . . ." (emphasis added). The specific compensable injury must not only affect other body parts, but "extend" to them. Travelers' Insurance Co. v. Marmolejo, 383 S.W.2d 380 (Tex. 1964). At least one case indicates that if other portions of a claimant's body are not impaired "except as affected by the injury to or loss of use of the particular member, there would be . . . no recovery allowed for the impairment of any other portions of claimant's body." Coleman v. Hartford Accident & Indemnity Co., 297 S.W.2d 236 (Tex. Civ. App.-Ft. Worth 1956, writ ref'd). Likewise, although the evidence here indicated a general "affect" on claimant in that she then used her other hand more, there is no evidence that there was an extension, or progression, of the left handed CTS (or cat bite infection) into the right hand.

By relying in part on Maryland Casualty Co. v. Sosa, 432 S.W.2d 515 (Tex. 1968) as standing for the proposition "nonuse" equates to compensable injury, the dissent somewhat oversimplifies the holding of that case. In Sosa, the injury to the shoulder was directly caused by existence of a cast on the arm, which specifically prevented use of the claimant's shoulder (an "extension"). The court commented on the absence of evidence

that claimant's nonuse of his shoulder was voluntary. The medical evidence in this case does not, as the dissent indicates, state that the right handed CTS is a "direct and natural" result of the left handed CTS (which itself did naturally, and directly, result from scarring due to the cat bite, not from repetitive use). The dissent endorses the concept of direct and natural result, but does not apply it to the facts of this case. A fair reading of the entire decision in Appeal No. 93414 (and not just the phrase quoted by the dissent) makes clear that it does not stand for extension of an injury to a condition that is simply "related to" to the original injury. Were that the standard, the definition of "injury" would be effectively negated.

Because the right hand CTS was not part of the compensable injury, the designated doctor's opinion indeed stands as a rating of the "compensable injury" and was entitled to presumptive weight. The only medical evidence against this report was Dr. E's report, but it found MMI would occur in the future and rated impairment accordingly. As such, it was not a valid certification of MMI and impairment. See TEX. LAB. CODE ANN. § 408.123(a); Texas Workers' Compensation Commission Appeal No. 93361, decided June 23, 1993. There being no great weight of contrary medical opinion (and no finding of such by the hearing officer) to the opinion of the designated doctor, it must be given presumptive weight.

Accordingly, we reverse the decision of the hearing officer and render a decision that claimant reached MMI from her compensable injury on February 5, 1993, with a five percent whole body impairment. Benefits should be paid accordingly. We note that the carrier should explore recoupment of benefits overpaid as a result of the hearing officer's decision from the subsequent injury fund (and not from the claimant).

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

DISSENTING OPINION:

With nothing but the highest regards for the opinions of my colleagues, I respectfully

dissent. Recognizing that reasonable minds may differ I base my dissent on Texas Workers' Compensation Commission Appeal No. 93414, decided July 5, 1993. In that case we affirmed a hearing officer who found that because of a compensable knee injury the employee was forced to wear a knee brace and alter her gait. The altered gait in turn caused a subsequent back injury which was held compensable. In Appeal No. 93414, we stated "[t]he facts in this case give rise to the situation where there is an occurrence of a follow-on injury related to an original injury." Our decision in Appeal No. 93414 is partly predicated on our earlier decision in Texas Workers' Compensation Commission Appeal No. 92538, decided November 25, 1992, in which we affirmed a hearing officer who found that the claimant's physical therapy treatment for CTS had resulted in an injury to her back and hip. Other cases such as Texas Workers' Compensation Commission Appeal No. 93664, decided September 15, 1993, held follow-on mental injuries, such as depression, compensable provided there was evidence of causation by the compensable physical injury.

In both Appeal Nos. 93414 and 92538, the Appeals Panel cited, with approval, the language from Maryland Casualty Company v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, aff'd per curiam, 432 S.W.2d 515 (Tex. 1968)) as follows:

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 therefor, causes other injuries which render the employee incapable of work.

Sosa was a case where an employee sustained an injury to his wrist. A pin was inserted, the arm was initially placed in a long cast and eventually a "short arm cast." Because of the employee's immobility, he developed adhesions in his shoulder which were caused from lack of use of the shoulder. The court held the shoulder injury compensable as it was not solely caused by "voluntary non-use." Larson, Workmen's Compensation Law, Vol. 1 § 13.11(a) pp. 3-503-523 (Matthew Bender, 1992) states:

The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.

The simplest application of this principle is the rule that all the medical consequences and sequelae that flow from the primary injury are compensable.

Given this background and general law, it is difficult for me to distinguish why the instant case is not compensable. Concededly there are cases to the contrary, however, I have difficulty in determining what the applicable standard might be. If the shoulder injury in Sosa is compensable because of nonuse of the arm, why would not the right arm injury

in the instant case based on overuse, because claimant's left arm could not be used, not also be compensable. If the requirement to wear a knee brace in Appeal No. 93414 caused a change in gait which in turn caused a compensable back injury, why cannot overuse of the right arm, due to forced nonuse of the left arm, cause CTS in the right hand? Sosa states that if a compensable injury "causes other injuries which render the employee incapable of work" those follow-on injuries would also be compensable. This too would seem to be the basic rule enunciated by Larson, provided the follow-on injury "is the direct and natural result of a compensable primary injury." In the instant case both claimant and the treating doctor provided evidence of such a direct and natural result from the original cat bite. I am unwilling to reverse the hearing officer, as a matter of law, without providing some practical guidance on how future cases should be decided. I believe the majority opinion attempts to draw a much too fine distinction without providing practical guidance for future cases.

It would appear to me that we are sowing confusion and uncertainty in the inconsistency of our decisions by deciding some follow-on injuries are compensable and others are not, based on some, as yet, undefined standard. I would adopt Larson's "direct and natural result" standard leaving the causation determination to the hearing officer subject to the appellate review standard of a great weight and preponderance of the evidence. I would have affirmed the hearing officer's decision as not being against the great weight and preponderance of the evidence based on Appeals Panel decision precedent, although I would have reformed the hearing officer's determinations regarding the designated doctor's opinion on MMI and impairment.

Thomas A. Knapp
Appeals Judge