APPEAL NO. 94067

This appeal arises under the Texas Workers' Compensation act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on December 14, 1993, in (city), Texas, to determine the issue of whether or not the appellant's (hereinafter claimant) compensable injury of (date of injury), extends to an injury to his back. The claimant appeals the determination of the hearing officer, (hearing officer), that the claimant did not injure his back in the course and scope of his employment. The respondent, hereinafter carrier, responds that the hearing officer's decision is supported by the evidence and correctly states the law and therefore should be affirmed.

DECISION

We affirm the decision and order of the hearing officer.

It was undisputed that the claimant injured his right knee on (date of injury), in the course and scope of his employment. On January 8, 1993, he had surgery performed by (Dr. S); he also underwent physical therapy. Dr. S also released the claimant to return to work on May 24, 1993, and certified that he reached maximum medical improvement (MMI) on that date, with an eight percent impairment rating.

The claimant testified that he re-injured his right knee while at home in mid-July of 1993. The injury occurred when, while walking to his house from the back yard, his knee locked and he twisted his body in an effort to keep from falling. (The claimant testified that his knee had "locked up" on occasion after his surgery.) The claimant said he also "felt something" in his back as a result of this incident. He spoke with carrier's adjuster the following day about his knee and back problems, and was told to see a doctor. Claimant saw (Dr. G) on July 14th for his back pain; Dr. G ordered an MRI on July 21st which disclosed a herniation at L4-5. The claimant said that Dr. G asked him how he twisted his body, and that he told him the back injury was related to the locking incident with the knee. An Initial Medical Report (Form TWCC-61) signed by Dr. G states, in part erroneously, "knee gave out on him [while on work duty] causing him to fall and injure his back." Claimant also stated that Dr. S and (Dr. C), the designated doctor appointed by the Texas Workers' Compensation Commission to determine MMI and impairment rating, told him basically the same thing. The report of Dr. C cited a December 28, 1992, report from Dr. S recording claimant's complaints of continued catching and locking in the knee. It also stated, "On July 8, 1993, the examinee was still having pain and swelling with some catching, but no locking and states that it pops predominantly anterolaterally . . . . On July 14, 1993, the examinee was at home when his knee caught him and twisted his back." That report further stated:

> Based upon the available information and to a reasonable degree of medical certainty, there is a probable causal relationship between the current complaints and the occupational injury reported. The right knee injury was originally a partial thickness condylar problem that became a full thickness problem. The back problem is not caused directly from the initial injury; however, because of his problems that he was having with the knee that were

> continuous up to the time that he had his fall at home the second time, he has a herniated disc in the back. Therefore, in a linear fashion, the back injury is related to the initial injury, but it is a consequence of the initial injury, not a direct result of the initial injury.

Claimant himself stated that he had had no back problems arising from the original incident of (date of injury).

The claimant stated at the hearing that he had a second knee surgery about two weeks after the July incident and that the carrier paid for the surgery. While the carrier did not deny this fact, it introduced into evidence a Form TWCC-21 (Payment of Compensation or Notice of Refused/Disputed Claim) dated October 11, 1993, which indicates the carrier disputed that the injury to the back and/or right knee on or about July 13, 1993, was a compensable aggravation of the original injury of (date of injury).

In his appeal, the claimant cites caselaw, Maryland Casualty Company v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968), *writ ref'd n.r.e. per curiam*, 432 S.W.2d 515 (Tex. 1968), for the proposition that a subsequent injury is compensable where it is caused by the original compensable injury or the proper or necessary treatment of the original injury. He also states that the compensability of a subsequent injury is one of fact, and that the testimony and exhibits in this case compel the conclusion that claimant's back injury is causally related to his knee injury.

The 1989 Act defines "injury" in pertinent part to include "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). The Appeals Panel has numerous times considered cases in which a claimant contended that a "follow-on" injury was caused by the original, compensable injury or treatment therefor.

In Texas Workers' Compensation Commission Appeal No. 92553, decided November 30, 1992, the panel quoted the act's definition of injury and went on to state:

> . . . [T]he 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." . . . 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.

And Professor Larson, in discussing range of compensable consequences, writes:

> . . . 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. 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. [Emphasis added].

Larson, Workmen's Compensation Law, Vol. 1 § 13.11.

Maryland Casualty Company v. Sosa, *supra*, cited by the claimant, involved a compensable fracture which required the claimant's arm to be treated by traction and a cast from knuckles to elbow, which was later replaced by a short arm cast. The claimant complained of shoulder pain during his treatment and was later diagnosed as having developed adhesions in his shoulder joints. The court of appeals upheld a lower court determination that the original injury extended to and affected the claimant's shoulder, stating that the evidence supported findings that the claimant's left shoulder problems were not solely caused by his voluntary nonuse, but rather by the cast which restricted his movements. This case was cited in Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524 (Tex. 1975), which involved a claimant whose compensable injury, severed tendons in one hand, subsequently progressed to amputation of a finger, then inability to close his hand, lift his arm, or pull or bend his elbow, followed by injections in his arm and leg which resulted in paralysis and low back pain, numbness in his lower extremities, and a bilateral limp. The court stated that the site of the trauma and its immediate effects are not necessarily determinative of the nature and extent of the compensable injury, and that the full consequences of the original injury, together with the effects of its treatment, upon the general health and body of the worker, are to be considered. However, the court also stated that "The record reveals an uninterrupted and increasingly debilitating sequence of events which had its genesis in the initial injury to his hand."

The hearing officer in this case made a finding that the injury to the claimant's back did not naturally result from the damage or harm done to the physical structure of his body at the time of the injury on (date of injury), and thus he concluded that the claimant did not injure his back in the course and scope of his employment as a result of a compensable injury. In his discussion of the evidence he relied upon the language in Maryland Casualty Co. v. Rogers, *supra*, in stating that claimant's lowered resistance to falling does not make compensable a subsequent injury which does not "flow naturally" from the original injury. The court in that case also stated that the cause of the injury "set in motion . . . operated continuously through a sequence of events, each flowing naturally from one to the other . . . ."

The Appeals Panel has held that the issue of whether a subsequently-arising injury was caused by the original compensable injury, or the proper and necessary treatment of it,

is generally one of fact. Texas Workers' Compensation Commission Appeal No. 93861, decided November 15, 1993. The 1989 Act provides that the contested case hearing officer is the sole judge of the relevance and materiality of the evidence as well as its weight and credibility. Section 410.165(a). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). In this case, similar to Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993, the fact finder held that the requisite degree of direct causation had not been established. As in Appeal No. 93672, while there is evidence in the record below to support a finding that the original injury caused the subsequent back injury, we do not find that the hearing officer's determination is so against the great weight and preponderance of the evidence as to require reversal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We accordingly affirm the hearing officer's decision and order.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge