APPEAL NO. 941575

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN § 401.001 *et seq*. (1989 Act). On October 26, 1994, a contested case hearing (CCH) was held. The sole issue was: "Is CLAIMANT'S burn to his left leg and subsequent infection a result of the compensable injury sustained on (date of injury)?" The hearing officer determined that the claimant's burn to his left leg and subsequent infection are as a result of the compensable injury sustained on (date of injury). Appellant, carrier, contends that the hearing officer misapplied the law and the argument presented at the hearing, and requests that we reverse the hearing officer's decision and render a decision in its favor. Respondent, claimant, did not file a response.

DECISION

The decision and order of the hearing officer are reversed and a new decision rendered.

The facts are straight forward and not in dispute. Claimant sustained a compensable injury on (date of injury) (in a rollover car accident), where he suffered a T-7, T-8 spinal fracture with residual paraplegia. It is undisputed that claimant has no motor or sensory function below the waist ("umbilicus") and that he has "no sensation to temperature, touch or vibration" below the waist. On (date) (almost two years after his compensable injury), claimant was participating in a family cookout and was sitting about one foot from the grill. Claimant reached down to brush some ashes off his left leg and felt blisters on his leg just below the knee. Claimant sustained a severe burn and received first aid at home that evening and went to see his doctor, Dr. M, on May 31st. Dr. M admitted claimant to a hospital. Claimant apparently developed an infection and stayed in the hospital four days. Upon his release from the hospital, Dr. M insisted that claimant receive follow-up nursing care in his home. The records indicate that he received nine home nursing visits between June 8 through July 8, 1994. The hearing officer recites that claimant's burn and subsequent infection have completely healed. The only medical report for this incident is a report dated September 29, 1994, from Dr. M which states:

> On May 28, 1994 the patient was sitting next to a hot grill. Secondary to his loss of sensation, he was unable to feel that his leg was burning. As a result, [claimant] suffered a sever [sic] burn injury which required hospitalization.

Carrier has apparently denied medical benefits, which claimant is requesting be paid. Carrier's position at the CCH, and on appeal, is that:

> any link between the claimant's initial injury and his subsequent burn two (2) years later is simply too remote and too tenuous to consider the subsequent burn to be compensable. The claimant's subsequent burn was just not a natural or foreseeable result of his original injury.

Carrier cites several Appeals Panel decisions but makes no other effort to cite or analyze applicable legal case law. Vol. I, Larson's Workmen's Compensation Law, § 13.11 page 3-502 (Matthew Bender 1994) states:

> . . . 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. [Citations omitted.]

> 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.]

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

Larson states that cases illustrating this rule fall into two groups: Complications following an initial injury (not applicable here) and exacerbation of independent medical condition by compensable injury. Larson states that while the causal sequence of cases in the second group may be more indirect or complex, "as long as the causal connection is in fact present, the compensability of the subsequent condition is beyond question." *Id* at page 3.524. In this section, Larson cites, among other cases, a New York case where decedent had suffered serious compensable injuries which had resulted in partial paralysis. The loss of sensation had masked symptoms of cancer, which caused his death and the death was held compensable. Namanowich v. En Operating Corp, 23 A.D.2d 912, 258 N.Y.S.2d 937 (1965).

We distinguish the line of cases cited by Larson (as being the closest factually) to the instant case on the basis that they appear to involve medical consequences and sequelae of the original injury. This rationale has been followed by the Appeals Panel to a certain extent, as in Texas Workers' Compensation Commission Appeal No. 93414, decided July 5, 1993, where the Appeals Panel cited with approval the following language from 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)):

> 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.

In Appeal No. 93414, *supra*, we affirmed a hearing officer who found that a knee injury caused a subsequent back injury by requiring the claimant to alter his gait, when there was conflicting medical evidence as to causality. 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, and in which we affirmed a hearing officer who found that the claimant's physical therapy treatment for carpal tunnel syndrome had resulted in an injury to her back and hip. Appeal No. 92538 cites our opinion in Texas Workers' Compensation Commission Appeal No. 92540, decided November 19, 1992, where we affirmed the decision of the hearing officer that a heart attack which took place during surgery for the claimant's compensable back surgery was itself compensable. Further, we affirmed the hearing officer in Texas Workers' Compensation Commission Appeal No. 93664, decided September 15, 1993, who held that the claimant had not yet reached maximum medical improvement (MMI) due to depression resulting from her back and neck injuries. In Texas Workers' Compensation Commission Appeal No. 92553, decided November 30, 1992, which the carrier cites in the present case, we affirmed a hearing officer who found that the claimant's injury to his wrist and thumb were not caused by a fall at home on his unsteady injured knee. We would note in all these cases the follow-on injury was in some way directly connected (a direct and natural result) of the compensable primary injury.

Texas Workers' Compensation Commission Appeal No. 94067, decided February 28, 1994, upheld the denial of benefits in a claim for a back injury alleged as resulting from twisting at home when a prior compensable knee injury caused the claimant's knee to lock. Appeal No. 94067 cites Appeal No. 92553, *supra*, where the panel quoted the Act's definition of injury and stated:

> [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.

The court in Rogers went on to state that the cause of the injury "set in motion . . . operated continuously through a sequence of events, each flowing naturally from one to the other. . . ." It is in this area that we believe the instant case fails. Further, in Texas Workers' Compensation Commission Appeal No. 93574, decided August 24, 1993, the Appeals Panel reversed the hearing officer and held that the evidence showed that the claimant was not injured in the course and scope of her employment when she fell coming out of the shower at a YMCA to which she had gone to swim as part of her prescribed postsurgery physical therapy.

The Appeals Panel has 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 Appeal No. 92553, *supra*, and Texas Workers' Compensation Commission Appeal No. 93612, decided September 3, 1993. 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 addition to Tylenol #4 and subsequent methadone treatment were "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 summary, we do not find that claimant's burn "flowed naturally" from his original and primary compensable injury. To hold otherwise would make the carrier the absolute insurer of virtually any accident or incident which might befall claimant. For example, if a tornado hit claimant's home and he suffered further injury, extending claimant's argument to its logical conclusion, carrier would be liable because "but for" claimant's paralysis he could have sought shelter in a storm cellar (or elsewhere inaccessible to claimant in his present condition). This we are unwilling to do. As can be seen from the cited cases and Larson's text, we believe that the follow-on injury must have some connection to, and flow naturally from, the original injury. We do not believe that to be the case here.

Accordingly, we reverse the decision and order of the hearing officer and render a new decision that claimant's burn to his left leg and the subsequent infection are not the direct and natural result of (or flow naturally from) the compensable injury sustained on (date of injury). Claimant continues to be entitled to medical and income benefits for the injury of (date of injury).

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge