APPEAL NO. 951402
FILED OCTOBER 5, 1995

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 July 13, 1995. The carrier appeals the hearing officer's determination that the claimant's compensable right knee injury also extends to and includes a left knee injury, stating that the hearing officer's decision is not supported either by the facts or the applicable law. The claimant responds that the hearing officer considered all the evidence in the case and that the hearing officer's decision is supported by the evidence.

DECISION

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

It was not disputed that the claimant, employed by (employer), injured his right knee in the course and scope of his employment on _____. He said that his first doctor, Dr. R, treated him conservatively, and that after he moved he began treating with Dr. W, who ordered an MRI which disclosed a lateral meniscus tear. The claimant underwent arthroscopic surgery of the right knee on November 2, 1994.

It was claimant's testimony that while returning to his home on the day he was released from the hospital, he slipped while using crutches and turned or twisted to the left side, causing him to experience pain and some swelling in the left knee. A similar incident occurred in his home approximately one week later; this time, he said, the pain was not as severe as before but there was more swelling in the left knee. The claimant said he was on crutches for not quite three weeks, and that it took perhaps five to six weeks before he could move around easily; during that time he said he put more weight on his left knee.

The claimant said that he reported the left knee incident to Dr. W on his next regular visit, and continued to complain to Dr. W about left knee problems on all but one subsequent visit. However, he said that Dr. W did not comment on his complaints, and postsurgery reports of that doctor dated November 14th and 22nd, and December 12, 1994, do not mention any left knee problem. In the latter report Dr. W stated that the claimant had been released, having reached maximum medical improvement (MMI), with a 16% impairment rating (IR) which was due solely to the compensable injury. On March 3, 1995, the designated doctor, Dr. C, wrote that he agreed with Dr. W's MMI date, although he assigned an IR of 14%. A portion of this was due to loss of range of motion in the right knee as compared to the opposite knee.

On February 23, 1995, Dr. W wrote for the first time that the claimant "is starting to have problems with the left knee in the form of weight-bearing. He did slip one week after his arthroscopy with a twist to the left knee." He also stated that there was no diffuse tenderness but some puffiness of the synovium, "probably related to increased weight

bearing over the left side in protection of his right more symptomatic knee." He concluded that a tear of the left medial meniscus could be present and an MRI was indicated if anti-inflammatories did not provide relief. On March 9th, Dr. W stated that he was recommending an MRI because of the failure of the medication.

In a letter to the carrier dated June 6, 1995, Dr. W wrote that shortly after surgery the claimant was "ambulating postop on crutches on a rainy day, when one of the crutches slipped on the sidewalk pavement and he went down on his left knee in a protective reflex action to the postop right knee." He went on to say that he realized his medical notes do not mention this event until February 23, 1995, "when his symptoms escalated from chronic to acute;" however, he said he did not recall why he did not record claimant's complaint "other than the fact that I did not feel it was note worthy at the time." He concluded that claimant's problems with the left knee "then and now are certainly attributable to an event such as he described to me on _____," although he stated that without an MRI "no one will know for sure if the left knee complaint is related to the postop risks of the right knee."

In its appeal the carrier points to evidence which supports its position that the claimant's compensable right knee injury does not extend to or include a left knee injury; this evidence includes the lack of reference to an alleged injury in contemporaneous medical reports of the treating doctor, the designated doctor's failure to mention any problem with the left knee, and Dr. W's statement that without an MRI no one would know for sure whether the left knee complaint was related to the postoperative risks of the right knee. Notwithstanding the fact that that evidence would have supported a decision in the carrier's favor, upon review of the evidence as to the events surrounding an injury to the left knee we cannot say that it was so lacking that the hearing officer could not have based findings of fact on claimant's own testimony and the reports and letters of Dr. W.

However, the carrier also argues that applicable law regarding causation and subsequent injuries does not support the hearing officer's decision. It cites Texas Workers' Compensation Commission Appeal No. 94067, decided February 28, 1994, which affirmed a hearing officer's determination that the claimant's back injury, allegedly suffered when his compensable injured knee locked up while he was walking, was not a part of the compensable injury. That case, as this one, centered around the question as to whether a particular injury "naturally resulted" from the original damage or harm to the physical structure of the body. Section 401.011(26). As the court stated 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)), "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."

Appeals Panel decisions have considered instances where a follow-on injury has allegedly resulted from treatment for the compensable injury. *See*, for example, Texas Workers' Compensation Commission Appeal No. 94210, decided March 31, 1994, Texas Workers' Compensation Commission Appeal No. 93861, decided November 15, 1993, and Texas Workers' Compensation Commission Appeal No. 950938, decided July 24, 1995, concerning alleged injuries from work hardening/physical therapy prescribed as a result of a compensable injury; Texas Workers' Compensation Commission Appeal No. 941217, decided October 26, 1994, which found compensable claimant's gastritis and gastrointestinal bleeding which medical evidence showed was caused by anti-inflammatory medication prescribed for a hip and back injury; Texas Workers' Compensation Commission Appeal No. 92540, decided November 19, 1992, which found compensable an employee's death from a heart attack during surgery for a compensable back injury; Texas Workers' Compensation Commission Appeal No. 93574, decided August 24, 1993, in which compensability was denied for right knee and back injuries, which claimant contended were the result of slipping in a shower after swimming, which had been prescribed as postsurgery therapy. Another category of "follow on injury" cases has involved situations where one body part is subjected to stress or overuse due to compensable injury to another. *See* Texas Workers' Compensation Commission Appeal No. 93725, decided September 28, 1993, which found noncompensable the claimant's left hand carpal tunnel syndrome allegedly caused by overuse while the compensable injured right hand was in a splint; Texas Workers' Compensation Commission Appeal No. 941383, decided November 28, 1994, and factually similar to Appeal No. 93725; Texas Workers' Compensation Commission Appeal No. 93414, decided July 5, 1993, and Texas Workers' Compensation Commission Appeal No. 950512, decided May 16, 1995, which found compensable back injuries resulting from an altered gait caused by compensable knee injuries.

In addition, we have many times considered cases in which instability, weakness, or lowered resistance from a compensable injury allegedly resulted in an injury to another part of the body. Thus, we have considered, and found noncompensable, injuries resulting from an unstable or buckling knee (Texas Workers' Compensation Commission Appeal No. 94067, decided February 28, 1994; Texas Workers' Compensation Commission Appeal No. 92553, decided November 30, 1992; and Texas Workers' Compensation Commission Appeal No. 950524, decided May 19, 1995. Similarly, in Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993, we found noncompensable a back injury resulting from a fall which the claimant asserted was caused by her foot giving way due to a compensable foot injury.

We believe that Texas Workers' Compensation Commission Appeal No. 941575, decided January 5, 1995, involved a situation similar to the instant one in which a claimant's state of lowered resistance as a result of a compensable injury was alleged to have caused another injury. In that case, the claimant had suffered a compensable spinal fracture with residual paraplegia which left him with no motor or sensory function below the

waist. Subsequently, while at home sitting next to a hot grill, he suffered a burn injury to his leg which he was unable to detect at the time. After discussing applicable caselaw and Appeals Panel decisions the panel stated that it "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." The panel cited to Appeal No. 94067, *supra*,which cited Maryland Casualty Company v. Rogers, 86 S.W.2d 867 (Tex. Civ. App.-Austin 1935, writ ref'd), and stated as follows:

> 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 panel in Appeal No. 941575 concluded:

> 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.

We believe that the facts of the instant case fall more in the realm of cases such as Appeal No. 941575 insofar as the injury for which compensation is sought is not a direct and natural result of the original compensable injury. Rather, in this case, claimant's injury can be said to have originated in an intervening event, when his crutches slipped while he was at home. As we quoted 1 ARTHUR LARSON, THE LAW OF WORKMEN'S COMPENSATION, 13.11, (1995), in Appeal No. 93725, *supra*:

> 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.

Further, to the extent that it could be argued that the claimant's crutches constituted a form of treatment arising from the injury, we believe the producing event is similarly remote as that in Appeal No. 93574, *supra*, where the claimant sought compensation because her physical therapy had placed her in a slippery environment (a shower facility at a swimming pool) where she fell.

Accordingly, and based upon the foregoing, we reverse the decision and order of the hearing officer and render a new decision that claimant's compensable right knee injury does not extend to or include a left knee injury. The claimant continues to be entitled to all appropriate medical and income benefits for the injury of _____.

_____
Lynda H. Nesenholtz
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Elaine M. Chaney
Appeals Judge