

APPEAL NO. 951822
FILED DECEMBER 18, 1995

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 28, 1995. With respect to the issue before him, the hearing officer determined that appellant's (claimant) "compensable right knee injury of _____, does not extend to and include an injury to his left knee." Claimant appeals arguing that the hearing officer's factual determinations are against the great weight and preponderance of the evidence and requesting that we reverse the hearing officer's decision and render a new decision that his left knee injury is compensable. No response to the appeal was received from the respondent (carrier).

DECISION

We reverse the hearing officer's decision and order and enter a new decision that claimant's left knee injury is compensable.

The facts in this case are largely undisputed. On _____, claimant, a 24-year employee of (employer), slipped and fell in employer's shop area and injured his right knee. Claimant continued to work but his right knee pain increased; therefore, in December 1993, he sought medical treatment. On February 11, 1994, claimant had surgery on his right knee. Apparently, claimant developed an infection after the surgery which resulted in his hospitalization. Thereafter, claimant was required to walk on crutches for a period of time. Claimant testified that as a result of his knee injury, the surgery and the complications that arose thereafter, he had to change the way that he walked and he was required to bear more of his weight on his left leg. Specifically, claimant testified that because he has had to carry more of his weight on his left leg, he has developed constant, intense pain in his left knee. It is undisputed that claimant has a degenerative condition in his left knee which existed at the time of his compensable right knee injury; however, claimant argues that because he had to alter his gait and carry additional weight on his left leg due to his right knee injury and the treatment for that injury, he has aggravated his left knee condition. That is, claimant argues that his left knee injury is a compensable follow-on injury, which was a direct and natural result of his compensable right knee injury.

Three doctors have addressed the issue of whether there is a causal connection between the condition in his left knee and his compensable right knee injury and the treatment he received for that injury. In a report dated March 27, 1995, claimant's treating orthopedic surgeon, Dr. G, stated that claimant's "left knee problems are secondary to his right knee injury of _____." Dr. G further opined "I sincerely believe that because the patient has had to bear more load on the left knee, it has aggravated the degenerative joint disease condition on the left knee." Dr. C, an orthopedic surgeon to whom claimant was referred by Dr. G for a second opinion stated that claimant's "problems on the left are related to the right, because he has to apply

more pressure and stress to the left, because of the previous surgeries on the right." Carrier sent the claimant to Dr. S, an orthopedic surgeon, to provide an opinion on the causation issue. In a report dated February 27, 1995, Dr. S noted that "[t]he patient may have put a slight more amount of load on the left knee since his right knee injury, however, his underlying degenerative disease is the main problem." Dr. S concluded his February 27th report by stating that he did not "feel that the patient's main problems in his left knee are related to his industrial injury." Claimant returned to Dr. S for a second time, although it is unclear from the record how that appointment was scheduled. In a report dated July 31, 1995, Dr. S opined that "it is reasonable and medically reasonable to believe that the patient's left knee symptoms have been markedly increased and the physical changes in his left knee have been markedly increased because of the inability to use his right knee well." Dr. S further explained his opinion, as follows:

In my last report to you, I stated that I did not feel the patient's main problem in his left knee was related to his industrial injury. However, the patient did have significant injury to his right knee. Because of the subsequent surgery to his right knee and the subsequent necessity to take weight off his right knee, he began putting more load onto his left knee. The patient did have pre-existing degenerative changes in his left knee. However, those have been markedly exacerbated by the necessity of transferring the weight to that knee.

Claimant argues on appeal, as he did at the hearing, that his left knee injury is a compensable follow-on injury, citing Maryland Casualty Co. v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, writ ref'd n.r.e.). In Sosa the court stated:

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.

425 S.W.2d at 873. In that case, the plaintiff sustained a compensable right wrist injury. As part of the treatment of his injury, the plaintiff's wrist was placed in a cast, the cast caused the plaintiff not to exercise his arm and restricted the movement of his shoulder, and finally, as a result of that non-use, the plaintiff developed shoulder adhesions. The Sosa Court affirmed a lower court's determination that the compensable injury extended to the shoulder injury.

In Western Casualty and Surety Co. v. Gonzales, 518 S.W.2d 524 (Tex. 1975), the plaintiff's initial injury was severed tendons in his left hand. That injury progressed to amputation of a finger, which was followed by claimant's inability to close his hand, lift his arm or pull or bend his elbow. Thereafter, the plaintiff received injections in his arm and leg, which resulted in paralysis, low back pain, numbness in his lower extremities and bilateral limping. In affirming the lower court's determination that the subsequent

injuries sustained by the plaintiff were compensable follow-on injuries, the Texas Supreme Court stated that "the record reveals an uninterrupted and increasingly debilitating sequence of events which had its genesis in the initial injury to the hand."

The case of Maryland Casualty Co. v. Rogers, 86 S.W.2d 867 (Tex. Civ. App.-Amarillo 1935, writ ref'd) is also instructive on the types of subsequent injuries that will be compensable under a follow-on injury theory. In Rogers, the plaintiff inhaled dust into his lungs from which he developed pneumonia and died. In affirming a finding of compensability, the court of appeals noted, as follows:

There must of course be a causal connection between the injury and subsequent death for the latter to be compensable. Here there was sufficient evidence of an injury to the lungs, followed immediately by symptoms indicating a predisposition to pneumonia, which in fact resulted, death occurring therefrom in just one week from the time of the alleged injury. The cause set in motion on Friday operated continuously through a sequence of events, each flowing naturally from one to the other, eventuating in death the following Friday.

86 S.W.2d at 871.

In Texas Workers' Compensation Commission Appeal No. 93414, decided July 5, 1993, the Appeals Panel affirmed a determination that claimant's compensable right knee injury caused her injuries to her back and left knee "because her right knee injury caused her to alter the biomechanics of her gait, which placed additional pressures on her back and other knee." Likewise, in Texas Workers' Compensation Commission Appeal No. 950892, decided July 12, 1995, the Appeals Panel affirmed the hearing officer's determination that a subsequently developed right knee injury was a compensable follow-on injury based on the evidence that the claimant's altered gait following the compensable injury had caused that injury. In Appeal No. 950892, we reversed a determination that claimant's back injury was also a compensable follow-on injury because of the lack of medical evidence demonstrating a causal connection between the original injury and the back condition which manifested itself some two years after the original compensable injury.

In Texas Workers' Compensation Commission Appeal No. 950524, decided May 19, 1995, the Appeals Panel reversed a determination that the claimant's subsequent neck and back injuries were compensable and rendered a determination that they were not. In Appeal No. 950524, the claimant sustained a compensable right knee injury on (date of first injury). On (date of subsequent injury), the claimant was at his home mowing the yard, when his knee gave away and he fell, injuring his neck and shoulder. In reversing and rendering a decision that the subsequent injuries were not compensable, the Appeals Panel noted:

The cases cited [where a follow-on injury was held compensable], however, involved a direct flow of events in showing causal relationship; a back condition caused by changed or altered gait following a knee injury, and an injury resulting from physical therapy treatment for a compensable injury. The situation in the case under consideration and those cited above where compensability has been found are markedly different. Here there is distinct non work-related activity involved in the subsequent injury, the injury is to a distinctly different body part, there is a lengthy period of time between the injury and the claimed subsequent injury, there was at most only a degree of weakening or lowered resistance, and there is a lack of reasonable medical probability evidence establishing the necessary causation. . . .

See *also* Texas Workers' Compensation Commission Appeal No. 941575, decided January 5, 1995, (where the Appeals Panel reversed a determination that burns on the legs of a claimant whose legs were paralyzed in a compensable injury were compensable follow-on injuries, rejecting a "but for" test of compensability and noting that the burns did not flow naturally from claimant's primary compensable injury); and, Texas Workers' Compensation Commission Appeal No. 93725, decided September 28, 1993, (where the majority opinion reversed the hearing officer's determination that a claimant's right carpal tunnel syndrome was a compensable follow-on injury that resulted from increased use of claimant's right hand due to a prior compensable injury to claimant's left hand because the injury was "too remote" and was not a "direct and natural result" of the original injury).

In this instance the hearing officer made an unchallenged factual determination that claimant was required to change his gait and, likewise, was required to bear more of his weight on his left leg. In addition, the hearing officer made the following factual determinations:

FINDINGS OF FACT

7. The evidence fails to establish that Claimant's left-knee pain is anything more than a manifestation of the preexisting degenerative joint disease.
8. Claimant's left-knee condition did not result from damage or harm to the physical structure of the body or from a disease or infection naturally resulting from any damage or harm which was a direct and natural result of his injury of _____.
9. The only aggravation of Claimant's preexisting degenerative joint disease caused by his _____, injury has been an increase in pain in the left knee.

10. Pain is a natural incident of Claimant's preexisting condition, and without further physical manifestations does not equate to an injury under the facts of this case.

We are somewhat puzzled by these findings. Admittedly, the claimant only testified to increased pain in his left knee and did not testify as to a change in the condition as opposed to its manifestation in pain. However, the unrefuted medical evidence from Drs. G, C and S is that claimant's condition, the degenerative joint disease, was aggravated or exacerbated by the change in gait and increased weight bearing on the left leg resulting from the compensable right knee injury and the treatment he received for that injury. As noted above, Dr. G stated that "because [claimant] had to bear more of the load on his left knee, it has aggravated the degenerative joint disease condition on the knee." Dr. C stated that claimant's "problems on the left are related to the right, because he has to apply more pressure and stress to the left, because of the previous surgeries on the right." Finally, Dr. S, a carrier-selected doctor, concluded that the degenerative changes in claimant's left knee were "markedly exacerbated by the necessity of transferring the weight to [the left] knee." (Emphasis added.) Based on this medical evidence, we find that the hearing officer's factual determinations that the altered gait and increased weight bearing on his left leg resulted only in pain and not in an injury to the left knee are so contrary to the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In light of the unchallenged determination that claimant was required to alter his gait in this case and to bear more of his weight on his left leg and having found that the determination that claimant did not sustain an injury to his left knee is against the great weight and preponderance of the evidence, we believe that the record clearly reveals an "uninterrupted . . . sequence of events which had its genesis in the original injury" such that claimant's left knee injury is a compensable follow-on injury. That is, the evidence establishes that claimant's right knee injury operated continuously through a sequence of events (the altered gait and increased load bearing), flowing naturally from one to another and resulting in the exacerbation of claimant's left knee condition. Therefore, we reverse the hearing officer's determination that claimant's left knee injury is not compensable and render a new decision that it is.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge