

APPEAL NO. 990257

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 15, 1999. He (hearing officer) determined that the appellant's (claimant) mental depression was not a result of his compensable right knee injury of _____, and that his left knee injury was not causally connected to the _____, injury. The claimant appeals these determinations, contending that they are contrary to the great weight and preponderance of the evidence. The respondent (self-insured) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed, as reformed.

The claimant sustained a compensable right knee injury on _____, when he slipped and fell from the step of a backhoe. The circumstances of this injury are set out in Texas Workers' Compensation Commission Appeal No. 950744, decided June 15, 1995 (Unpublished), in which we affirmed the determination of another hearing officer that the claimant's compensable injury did not include the neck and back.

Section 401.011(26) defines injury as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." The claimant now contends that both his left knee condition and depression are "naturally resulting" from his original compensable right knee injury.

The claimant testified that his left knee started bothering him about two months after he fell, that is, sometime about November 1994. After right knee surgery on March 5, 1995, the claimant said, he used crutches and put added stress on his left knee. He also testified that in 1994 Dr. A performed neurological testing on the knee, which showed a "problem." In a medical report of December 20, 1994, Dr. A diagnosed a "left knee contusion or strain with apparently no orthopaedic evidence of internal derangement." He did not address the cause of this condition. In a report of an examination on August 22, 1995, Dr. D commented that the claimant "states that now it seems like his left knee is also going to give out on him and pop and this began two months ago." Dr. L performed arthroscopic surgery on the claimant's left knee on July 30, 1997. He diagnosed a breakdown of the medial meniscus, degenerative changes, and a mild osteochondral fracture. He commented in a report of August 1, 1997, that it was "possible that his left knee problem directly relates to the after care following his work related right knee surgery as he had no definite traumatic event leading up to the left knee surgery." Dr. G, the claimant's current treating doctor, stated in a deposition that the claimant's right knee surgery would put stress on his left knee, but "more likely" on the lower back and ankle area. He said that the idea of walking with a cane was to take stress off the injured knee and the lower back. He further wrote in a report of March 4, 1998, that, because of his right knee injury, the claimant had to shift his weight to his left knee and this caused "wear and

tear to the left knee itself." Dr. Z, a former treating doctor, discussed bilateral knee problems in a report of an examination on May 15, 1997, but did not address causation. On June 3, 1998, Dr. K examined the claimant's left knee at the request of the carrier. He diagnosed patellofemoral dysfunction with no evidence of meniscal symptoms or ligamentous instability. It was his opinion that, if he had a meniscus tear directly after the injury, he would have complained of symptoms and concluded, "[o]verall, if pinned down I would have to say that it is very unlikely that his left knee is directly related to his on the job injury If the question came down to it, I would not feel that his left knee was compensable under his workers' comp injury."

The Appeals Panel has rejected the concept that would make compensable any consequence that arguably would not have occurred but for the compensable injury. See Texas Workers' Compensation Commission Appeal No. 980037, decided February 23, 1998, and cases cited therein. More specific to the facts of this case, the Appeals Panel has also generally disapproved of the notion that simple overuse of one limb to compensate for an injury to the other limb in itself establishes a naturally resulting compensable injury in the overused limb, particularly where the connection between the two injuries is remote, see Texas Workers' Compensation Commission Appeal No. 93725, decided September 28, 1993, and where the theory of compensability is based on a naturally resulting consequence, not simply on the extent of the original injury. See Texas Workers' Compensation Commission Appeal No. 971725, decided October 17, 1997. In other cases, body mechanics, such as an altered gait, may naturally result in another injury. See Texas Workers' Compensation Commission Appeal No. 93414, decided July 5, 1993; Texas Workers' Compensation Commission Appeal No. 950512, decided May 16, 1995. The one certain lesson from these cases is that the question of whether a subsequent physical injury naturally results from the primary injury is seldom resolvable as a matter of law. Rather, this is a highly specific factual determination in which the claimant bears the burden of proof, Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ), and the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). In these determinations, different hearing officers may well reach different results. We will reverse a factual determination of a hearing officer in a specific case only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility and persuasiveness of the evidence for that of this hearing officer. As the hearing officer commented in his decision and order, there was much medical evidence introduced, some of which addressed causation of a left knee injury and much of which was irrelevant or lacking in any discussion of causation. There was other evidence, particularly that of Dr. K, on which the hearing officer heavily relied for concluding that the left knee injury was not causally related to the compensable right knee injury. Such evidence, deemed credible by the hearing officer, was sufficient to support his resolution of this issue and we affirm that determination.

The claimant offered in support of his position that his depression was a result of his compensable right knee injury the opinions of Dr. W, Ph.D., a psychologist, and Dr. C, a psychiatrist. On May 29, 1998, Dr. C diagnosed a major depressive disorder "secondary to medical condition." He further commented that "[although objective findings of back injury are not overwhelming, I believe that claimant does indeed suffer from ongoing and continued pain in his neck and back as a result of his on-the-job injury . . . ongoing problems in his right knee . . . and now also having pain in his left knee (doubtful if related to the injury)." He further noted that the claimant had no psychiatric illness prior to his injury, that some of his pain symptoms are worsened by the depression and some of the depression was worsened "by the ongoing pain, frustration, and disappointment." He said the claimant also "feels frustrated" with the perceived unfair treatment "by the system." Dr. W performed a psychological evaluation on August 24, 1997, and noted severe stressors, including chronic pain and dysfunction, dependence on medical and insurance providers, loss of vocational viability, severe financial strain, loss of previous social and physical activities, continuing legal and medical disputes with providers, and an undetermined medical prognosis with ongoing recommendations for surgery. He diagnosed mood disorder "due to medical condition" and major depression and concluded that "[c]onsidering the findings, professional judgement would dictate that the psychological difficulties that [claimant] reports are most significantly related to his injury."

In Texas Workers' Compensation Commission Appeal No. 961449, decided September 9, 1996, we stated that "if a claimant's psychological condition is causally related to the compensable injury, it, too, is compensable," and "[t]he fact that there may be more than one cause of the claimant's psychological condition and that there are other stressors in this case beyond the claimant's chronic pain and multiple failed surgeries does not preclude a finding of compensability, provided that there is a causal connection between the compensable injury and the claimant's psychological problems." In Texas Workers' Compensation Commission Appeal No. 950749, decided June 21, 1995, the Appeals Panel stated "[although the claimant may not have experienced a psychological problem but for the fact that a back injury occurred in February 1991, and set in motion a protracted dispute resolution process, this is not alone a sufficient basis to conclude that an additional compensable injury has occurred." Appeal No. 950749 quoted the prior decision of Texas Workers' Compensation Commission Appeal No. 94591, decided June 22, 1994, which in turn quoted Texas Employers Ins. Ass'n v. Wilson, 522 S.W.2d 192, 195 (Tex. 1975), as follows:

[i]t therefore must be concluded that although the claimant may be disabled by reason of a neurosis traceable in part to *circumstances* arising out of and immediately following his injury, there must be a finding that the neurosis was the result of the *injury*. [Emphasis in original.]

We concluded that "[i]f a claimant's psychological problems are traceable to the 'circumstances arising out of and immediately following the injury' as opposed to being the 'result of the injury,' they are not part of the compensable injury." Appeal No. 961449, *supra*.

In the case we now consider, the hearing officer was not persuaded that the claimant's depression was caused by the compensable injury to the right knee, but was apparently persuaded that it was traceable to circumstances arising out of the injury, such as dealing with the "system" and financial stress, and to his non-compensable injuries. The hearing officer could also have concluded that the expert evidence did no more than establish that the claimant was not depressed before the injury, but was depressed after the injury. This "before and after" analysis does not as a matter of law establish causation.

Ultimately, the cause of the claimant's depression was a question of fact for the hearing officer to decide. The claimant had the burden of proof on this issue, and, contrary to his suggestion on appeal, the self-insured did not have to present evidence to refute his theory of causation. Under our standard of review, we find the evidence sufficient to support the determination that the depression was not a result of the compensable right knee injury.

Conclusion of Law No. 2 erroneously refers to the _____, compensable injury as a left knee injury. This is obviously a typographical error. We thus reform this Conclusion of Law to reflect that "the Claimant's mental depression is not a result of the compensable injury to his right knee that he sustained on _____." For the foregoing reasons, we affirm the decision and order of the hearing officer, as reformed.

Alan C. Ernst
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge