

APPEAL NO. 991028

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 April 23, 1999. She determined that the respondent's (claimant) compensable knee injury of _____, was a producing cause of his anterior cruciate ligament (ACL) and posterior horn medial meniscus tear of the right knee after January 1, 1999. The appellant (carrier) appeals this determination, contending that it is both factually and legally insufficient. The claimant replies that the decision is correct and should be affirmed.

DECISION

Affirmed.

The background facts of this case are largely undisputed. The claimant sustained a compensable right knee injury on _____. Arthroscopic surgery by Dr. P on May 9, 1997, disclosed a torn ACL. A second operation on June 10, 1997, included a partial lateral meniscectomy involving a partial tear of the posterior horn of the lateral meniscus and ACL reconstruction. Pain continued and on August 5, 1997, a third operation noted a tear of the ACL graft. Dr. J then became the treating doctor and undertook a two-stage revision of the failed ACL ligament graft. The first surgery on December 2, 1997, included hardware removal and excision of the old ACL graft. Bone chips were added to provide a site for implantation of a new cruciate ligament. On June 18, 1998, Dr. J completed the reconstruction using a patellar tendon graft. Although, according to Dr. J, good stability of the knee was obtained, he observed an unstable posterior horn tear of the medial meniscus which was repaired for additional stability. Over the next six months, the claimant "did extremely well" per Dr. J, who noted on December 8, 1998, that tests for ACL instability were all negative. Three weeks later, on January 1, 1999, the claimant was crossing a street when his foot slipped as he stepped onto the curb producing a sudden valgus strain to the knee joint. Dr. J diagnosed the post-January 1, 1999, condition of the knee as a "re-tear of the incompletely healed posterior horn of the medial meniscus." He concluded that the _____, injury was "a producing cause of the current knee problems," and that this incident is "directly related to failure of healing of the prior pathology." Dr. M completed a records review of this case for the carrier, and in a report of March 26, 1999, commented that, in his experience, one can tell if a meniscal repair is successful usually within three months. In this case he believed the surgery was successful because the claimant "functioned satisfactorily for six months without intervening symptoms. . . . It therefore seems most probable that this patient has a new problem related to a new injury rather than an aggravation of an ongoing problem."

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." In Texas Workers' Compensation Commission Appeal No. 94067, decided February 28, 1994, the Appeals Panel cited Maryland Casualty Company v. Rogers, 86 S.W.2d 867, 871 (Tex. Civ. App.-Austin 1935, writ ref'd) and wrote:

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 Appeals Panel has also rejected the concept which would make compensable every condition which arguably would not have occurred "but for" the first injury. Texas Workers' Compensation Commission Appeal No. 941575, decided January 5, 1995.

In the case we now consider, the hearing officer premised her finding of producing cause on Dr. J's opinion that the claimant suffered a re-tear of an incompletely healed posterior horn of the medial meniscus. In its appeal of this determination, the carrier argues essentially that, even though the claimant's knee was weakened by the compensable injury, there was no "natural flow" from the first injury. The cases cited in support of this argument deal generally with affirmances of hearing officer's decisions, *e.g.*, Texas Workers' Compensation Commission Appeal No. 962608, decided February 24, 1997 (Unpublished), and Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993, or with the follow-on injury affecting a different part of the body, *e.g.*, Appeal No. 93672, *supra*; Texas Workers' Compensation Commission Appeal No. 950524, decided May 19, 1995; and Texas Workers' Compensation Commission Appeal No. 961055, decided July 19, 1996. See *also* Texas Workers' Compensation Commission Appeal No. 981001, decided June 17, 1998, for an extensive discussion of precedent.

In Appeal No. 961055, *supra*, we observed that, in determining the compensability of a follow-on injury after a fall caused by a compensable knee injury, it is important to consider whether there was a distinct, nonwork-related activity involved in the subsequent injury, whether a distinctly different body part was injured, the length of time between the injuries, whether there was only a degree of weakening or lowered resistance, and whether there was medical evidence to establish causation. In Texas Workers' Compensation Commission Appeal No. 990644, decided May 12, 1999, we noted that cases not extending compensability to every follow-on injury generally involved a contention of injury to a different area of the body not originally injured. See *also* Texas Workers' Compensation Commission Appeal No. 92463, decided October 14, 1992. In the case we now consider, there is a diagnosis of a re-tear of an incompletely or improperly healed meniscal tear, not unlike the non-fusion in Texas Workers' Compensation Commission Appeal No. 971314,

decided May 25, 1997. There is medical evidence that this condition was caused by the original injury. The same body part was affected. The time delay between the last operation and the second incident was approximately six months. Ultimately, whether a prior injury is a producing cause of a later injury or whether the later injury naturally results from the prior injury are questions of fact for the hearing officer to decide. Appeal No. 93672, *supra*. We will reverse a factual determination of a hearing officer 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). The opinion of Dr. J provides sufficient evidentiary support for the factual determination of the causation. Consistent with our decisions in Appeal No. 990644, *supra*, and Appeal No. 92463, *supra*, we find no error of law in the resolution of this case.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge