APPEAL NO. 000514

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. ' 401.001 *et seq*. (1989 Act). On December 17, 1999, a hearing was held. The hearing officer closed the record on February 2, 2000, and determined that respondent/cross-appellant (claimant) sustained a compensable injury on _____, and another compensable injury on _____; that appellant/cross-respondent (carrier) waived the right to dispute the injury of _____; and that claimant is not entitled to supplemental income benefits (SIBs) for the 10th and 11th compensable quarters. Carrier addresses certain findings of fact and assigns a point of error concerning the determination that it waived its right to dispute the injury of _____; it also assigns a point of error "in determining that the claimant's depression naturally flowed from the compensable injury"; its final point of error concerned whether there was "a" direct result present in regard to claimant's unemployment relative to the impairment in the SIBs issue. Claimant asserts that she only made a few job contacts because an adjuster had told her that five contacts would be enough; she also says that the 11th quarter was the only quarter in issue. Carrier replied to claimant's appeal.

DECISION

We affirm with modification.

Claimant worked for (employer) in _____ when she hurt her back. She had surgery on September 2, 1997, which consisted of fusion surgery at L5-S1 with cages. Claimant testified that her spine was approached from both the front and back at surgery. After surgery, claimant was followed by Dr. S, who noted in October 1997 that claimant had a zero patellar response and a zero achilles response in both lower extremities. In February, May, September, and December 1998, plus January 1999, Dr. S found claimant's "lower extremity Babinski's to be absent." (Babinski's sign relates to "loss or lessening of the Achilles reflex. . . .") On February 24, 1999, Dr. S noted that claimant presented on February 22, 1999, stating that her "leg suddenly 'gave out' and she fell." He added that she has had "similar episodes since her . . . low back surgery."

Dr. G saw claimant on March 2, 1999. He stated that claimant fractured her left ankle on _____. Dr. G noted that claimant's left lower extremity "tends to give out"; it is not clear whether he is simply referring to what claimant told him. A cast was applied. On April 16, 1999, Dr. G said the cast would be removed and a boot would be used. Dr. G then said:

> My opinion is that she is going to do well and should not have too much of a problem. The fracture that she has is secondary to her back injury and is a direct result of it as we understand the injury complex.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He found that claimant has no reflexes in her ankle or knee, that claimant has a lack of motor control of the lower extremities, and that claimant's left broken ankle

incurred on _____, is "a direct and natural result of the back injury of _____ and the resulting loss of motor control and reflexes." The hearing officer's findings of fact apply the standard set forth in the definition of injury found at Section 401.011(26), which says that an injury includes "a disease or infection naturally resulting from the damage or harm." We note that similar language is also used in Section 408.021 which says that a claimant is "entitled to health care that . . . cures or relieves the effects naturally resulting from the compensable injury." We address this sequence of events and findings of fact regarding a fall and fracture even though carrier on appeal appears to confuse the issue as one of "depression"; there is some language in carrier's argument concerning "follow-on" injury and some reference to claimant's "degree of weakening" after the compensable injury.

With the hearing officer having applied the criteria set forth by the 1989 Act (we note that the carrier at hearing cited Texas Workers= Compensation Commission Appeal No. 982618, decided December 21, 1998, as having applied the correct criteria--"natural result," as opposed to "producing cause" in regard to follow-on injuries), the Appeals Panel should then review his factual determinations based on whether or not they are against the great weight and preponderance of the evidence. *See* Texas Workers= Compensation Commission Appeal No. 961918, decided November 7, 1996. The Appeals Panel has been reluctant to affirm determinations of compensability of an injury from falls, not at work, that occur after a compensable injury. Texas Workers= Compensation Commission Appeal No. 991636, decided September 16, 1999, referred to falls that occurred from "a weakened condition." While that case did not state that a fall resulting from a weakened condition brought about by the compensable injury could never be "naturally resulting," it did indicate that an opinion based on reasonable medical probability has been considered necessary. In the case under review, the medical evidence could be reasonably interpreted to indicate more than a "weakened" condition of certain reflexes since Dr. S stated that there was an absence of certain reflexes, which the hearing officer gave weight as reflected in his findings of fact. In addition, the hearing officer also considered that Dr. G said that the fracture is a direct result of the back injury. We note also that while Appeal No. 991636 also reports a greater likelihood of affirmation of "natural result" findings when a fall occurs soon after the injury, Dr. S in the case under review reported objective findings of certain reflexes being absent continually since the time of extensive fusion surgery in late 1997. The determination that claimant's fracture of a leg bone in 1999 was a natural result of the compensable _____ back injury is sufficiently supported by the evidence. We modify the conclusion of law that addresses the February 1999 fracture, however. That conclusion said that the February 1999 fracture was a compensable injury. As modified, it will read that claimant's February 1999 fracture of a leg bone naturally resulted from the _____ compensable back injury.

Carrier's appeal does not appear to differentiate factually between the injury of _____, and the later fall, saying only, "neither the claimant's original injury, or her second one, are compensable." Claimant testified that the February injury was not healed when, while walking at home, her "leg just gave out"; she also said that both legs gave out. Dr. G's note of July 22, 1999, said that claimant's left foot turned as she was walking on _____, and

she sprained her ankle. He added that the fracture had not completely healed at that time and this event caused a reinjury to the fibula. Dr. G did not provide an opinion one way or the other concerning direct result or natural result in regard to the July injury as he did for the February injury. However, the objective findings of absent reflexes recorded prior to either fall would apply to the latter fall just as they did to the earlier one. With carrier not distinguishing the facts of the second fall from those of the first and with the objective findings of absent reflexes since fusion surgery, the evidence is sufficient to support the conclusion of law, modified in regard to language of "compensable injury," as was done in regard to the February fall, to say that the July 1999 aggravation of the previous fracture naturally resulted from the _____ compensable injury.

Carrier also asserted error in regard to the determination that it waived its right to dispute compensability of the February 1999 fracture. While it took issue with a finding of fact as to when it received notice, its appeal indicates that it considered that notice not to contain facts showing compensability; it did not take issue with a finding of fact that it did not dispute compensability until approximately five months later. The note identified by the hearing officer was Dr. G's entry of April 16, 1999. It said that the fracture occurred on _____, and that it is "secondary to her back injury and is a direct result of it as we understand the injury complex." To interpret this note as providing "facts showing compensability" is not against the great weight and preponderance of the evidence. Carrier also argued that the Appeals Panel has misread the statute regarding whether there is a need to dispute extent-of-injury questions; it cites a recent change in applicable rules which is said to state that a carrier does not have to dispute extent-of-injury questions. That rule was not in effect at the time in question. The determination that carrier waived the right to dispute the February 1999 fracture is not against the great weight of the evidence.

Finally, carrier argued that claimant's unemployment was not a direct result of the impairment. With claimant having no reflexes from fusion surgery, there was some evidence that the unemployment was a direct result of the impairment.

Both carrier and claimant agree in their appeals that the 10th quarter was not in issue. The record reflects that carrier paid for the 10th quarter. Any references in findings of fact or conclusions of law to the 10th quarter are unnecessary to the issues and are disregarded.

Claimant argues that she was told by the carrier=s adjuster that she only needed to look for five jobs. We note that carrier paid for past quarters but that in 1999, new SIBs rules went into effect which call for a claimant to look for work each week of the qualifying period. Claimant did not testify that anyone told her in 1999 that she only had to look for five jobs; even if such a statement had been made, it would constitute a mistake of law, not of fact and would not result in a determination for claimant if she did not look for work each week of the qualifying period. The determination that claimant is not entitled to SIBs for the 11th quarter is sufficiently supported by the evidence.

The decision and order are modified to remove any reference to the 10th SIBs quarter. As modified, the decision and order are sufficiently supported by the evidence and are affirmed. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge