

APPEAL NO. 000593

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 March 2, 2000. The issue at the CCH was whether the compensable injury sustained by the appellant (claimant) on _____, extended to an injury to the cervical and lumbar spine. The hearing officer determined that claimant=s compensable injury of _____, does not extend to her cervical and lumbar spine. Claimant has requested our review, asserting that the hearing officer=s determination is against the great weight of the evidence. The respondent (carrier), noting the absence of medical opinion linking claimant=s _____, injury to her current cervical and lumbar spine conditions, urges our affirmance.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable injury to her right knee and right wrist on _____. According to the medical records, claimant slipped on some water and fell on that date. Claimant, testifying through a Spanish-language translator, stated that she subsequently had surgery on her injured knee by Dr. Z in June 1994; that following surgery she was on crutches for some period; and that she later changed treating doctors to Dr. L and began using a cane. She indicated that she also saw Dr. V for her spinal complaints. Claimant further testified that in the 1998-1999 period she fell at home on three occasions and also had some "near falls" which she attributed to the weakness of her right knee and leg. She also contended that the knee injury with its consequent weak right knee and leg resulted in her having an altered gait which, in turn, led to her having severe low back and neck pain. Claimant said the doctor told her that her nerves were swollen due to the falls.

The records of Dr. L reflect that he began treating claimant on March 4, 1996, for internal derangement of the right knee, post-traumatic arthritis of the right knee, and carpal tunnel syndrome of the right hand. There is no mention of back or neck pain in Dr. L=s records until February 2, 1999, when he stated that "[claimant] reports that her abnormal gait pattern has also produced pain in her lower back." Responding to claimant=s letter with questions, Dr. L wrote on November 18, 1999, that claimant has chronic pain, weakness and swelling in her right knee and entire leg; that she requires a cane at all times; that a patient with residual knee weakness is at increased risk for falling; and that the knee surgery which claimant underwent frequently causes an abnormal gait and an increased incidence of falling.

Dr. V=s record of February 17, 1999, reflects that he examined claimant on that date; that he diagnosed lumbar stenosis, lumbar spondylosis, and cervical spondylosis; and that claimant gave a history of having cervical and lumbosacral pain since October 1998 and of having several falls which exacerbated her condition. Claimant maintained that she had been experiencing such pain since an earlier date, though not immediately after the fall, and that it

got worse in October 1998. Dr. V's record of March 23, 1999, reflects that claimant underwent an anterior cervical arthrodesis with plating and discectomy at C5-6 on that date and that she is recommended for a lumbar decompression. Dr. V's records do not address the cause of her cervical and lumbosacral spondylosis and pain and he apparently did not respond to a letter with questions sent to him by claimant's attorney.

Section 401.011(26) defines injury to mean damage or harm to the physical structure of the body and a disease or infection "naturally resulting from the damage or harm." The question of the compensability of a subsequent or follow-on injury is generally one of fact to be decided by the hearing officer. Texas Workers= Compensation Commission Appeal No. 94067, decided February 28, 1994.

In Texas Workers=Compensation Commission Appeal No. 950524, decided May 19, 1995, the employee contended that his right knee, which was injured at work in August 1993, gave way in September 1994 when he bent over a lawn mower at home and that he fell against a building injuring his neck and shoulder and the hearing officer so found. The Appeals Panel, in reversing and rendering a new decision that the neck and shoulder were not part of the compensable injury, cited Texas Workers=Compensation Commission Appeal No. 93672, decided September 16, 1993, and a number of other cases which involved employees who, at some time subsequent to having sustained a compensable injury, had an extremity give way or lock up resulting in a fall and injury to other body parts and the later injury was determined to be noncompensable. Our decision noted that "in those cases, there was a distinct, nonwork-related body part, a lengthy period of time between the compensable injury and the claimed subsequent injury, at most only a degree of weakening or lowered resistance (or the extremity giving way), and a lack of reasonable medical probability evidence establishing the necessary causation, as distinguished from a >but for= analysis."

In Texas Workers= Compensation Commission Appeal No. 961540, decided September 23, 1996, the Appeals Panel stated that under certain circumstances an injury may be caused by an altered gait but noted that a claimant must prove by reasonable medical probability that the follow-on injury was caused by the compensable injury.

The hearing officer found that claimant did not sustain an injury to her cervical and lumbar spine in the course and scope of her employment on _____, and that the medical evidence is insufficient to establish a causal relationship between her cervical and lumbar spine conditions and her compensable right knee and right wrist injury of _____.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). As an appellate reviewing tribunal the Appeals Panel will not disturb the challenged factual findings of a hearing officer

unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer could correctly consider, among other things, the lack of medical "probability" evidence linking the claimed cervical and lumbar spine injuries to the compensable injury and the lapse of time between the compensable injury and the first documentation in the medical records of complaints of neck and low back pain.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Judy L. Stephens
Appeals Judge