

APPEAL NO. 000594

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). On March 7, 2000, a contested case hearing (CCH) was held. The issue stated from the benefit review conference report was:

1. Is the Claimant's [appellant] compensable left knee injury sustained on _____ a producing cause of his [sic, should be her] right knee condition?

Although confusing the right and left knee in her Statement of the Evidence and Findings of Fact, the hearing officer concluded that claimant's compensable left knee injury was not a producing cause of her right knee conditions.

Claimant appeals, pointing out that the hearing officer's discussion and findings incorrectly reference an initial compensable right knee injury when it should have been a left knee injury; that a witness who actually testified was not listed by the hearing officer; that a case cited by respondent (carrier) is not applicable; and citing evidence that the injury to the right knee flowed naturally from the compensable left knee injury. Claimant stresses that the right knee injury occurred within 30 (actually 22) days after the compensable left knee injury. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The appeals file does not contain a response from carrier.

DECISION

Affirmed as reformed.

Claimant testified that she sustained a left knee injury on _____ (all dates are 1999 unless otherwise noted), when she slipped and fell on a wet floor at work. The parties stipulated that claimant sustained a compensable left knee injury on June 8th. Claimant sought treatment from Dr. RB, who, in a report dated June 9th, had an impression "[l]eft knee contusion, possible internal derangement, rule out right meniscal tear." (Emphasis added.) Claimant was referred to Dr. BB, who, in a report dated June 24th, noted claimant's left knee "locking . . . occasionally." Dr. BB had an impression of a "[p]robable ACL [anterior cruciate ligament] tear," and possible lateral collateral ligament tear. Dr. BB ordered an MRI. Claimant testified that on June 30th, while at home, her left knee locked, causing her to fall forward and injuring her right knee. In a report dated July 13th, Dr. BB commented:

This patient returns for follow up of her left knee today. In the interim this patient had her left knee lock and as a result of her locking she fell down directly onto her right knee and suffered a patellar fracture.

In my absence, [Dr. W] saw her in the emergency room, and the patient underwent an open reduction and internal fixation of her right patellar fracture. This was a result of the locking of her left knee.

I have reviewed with them today the MRI which shows a Grade II medial meniscal tear as well as a partial ACL tear and a positive large bone bruise involving the patella and lateral plateau.

Similar comments were made by Dr. BB in reports dated August 3rd, September 14th and February 1, 2000. Dr. BB summarized claimant's injuries and treatment in a report dated February 14, 2000, when he stated:

This patient fell while at work on _____ and sustained an injury to the left knee. This has been confirmed eventually both by MRI and by arthroscopy as have a meniscal tear as well as a partial tear of the ACL.

Her symptoms, at that time, were pain, swelling, and locking of the left knee. She subsequently had the knee lock and fell onto her knees and suffered a patella fracture of the contralateral right knee. This occurred on _____.

* * * *

Again, this was a direct result of the meniscus catching in the contralateral knee, causing her to fall and suffer a right patella fracture.

The hearing officer, in her decision, after correctly stating the issue, in both her Statement of the Evidence and Findings of Fact, unfortunately and incorrectly refers to the original compensable injury being to the right knee which locked up and caused an injury to the left knee. In Finding of Fact No. 4, the hearing officer found:

FINDING OF FACT

4. Claimant's fall onto her left knee at home did not naturally arise out of her compensable right knee injury.

The hearing officer, however, in both her conclusion of law and the decision portion, correctly identified the knees, finding:

Claimant's compensable left knee injury sustained on _____ was not a producing cause of her right knee conditions.

Claimant quite correctly points out this error and requests that we take note of this error. We do so and reform the hearing officer's Findings of Fact Nos. 2, 3 and 4 to reflect that claimant's

left knee locked up, that claimant injured her right knee when she fell and that claimant's "fall onto her right knee at home did not naturally arise out of her compensable left knee injury." We also reform the hearing officer's decision under "Evidence Presented" to reflect that Mr. S, a physical therapist, testified on behalf of claimant.

The Appeals Panel has on occasion addressed the situation of follow-on injuries to both the same body party and to other body parts, as is the case here. Section 401.011(26) defines injury to mean, in part, "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. [Emphasis supplied.]" This case centers around the question of whether claimant's _____ right knee injury "naturally resulted" or naturally arose from the compensable left knee injury. The court in Maryland Casualty Company v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, writ ref'd n.r.e. *per curiam* 432 S.W.2d 515) stated that "[t]he 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." The Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 94067, decided February 28, 1994, cited Maryland Casualty Company v. Rogers, 86 S.W.2d 867, 871 (Tex. Civ. App.-Austin 1935, writ ref'd) and stated as follows:

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.

Texas Workers' Compensation Commission Appeal No. 981001, decided June 17, 1998, contains a survey of some of the Appeals Panel decisions regarding follow-on injuries, including Texas Workers' Compensation Commission Appeal No. 92553, decided November 30, 1992; Texas Workers' Compensation Commission Appeal No. 941575, decided January 5, 1995; and Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993; all cases cited by carrier at the CCH. In Texas Workers' Compensation Commission Appeal No. 951402, decided October 5, 1995, the Appeals Panel reversed and rendered a decision that the employee's compensable right knee injury of January 21, 1994, did not extend to his left knee which he claimed to have injured on the day he was released from the hospital following right knee surgery when he slipped using crutches and turned or twisted his left knee.

Texas Workers' Compensation Commission Appeal No. 991028, decided June 23, 1999 (Unpublished), is a case where a compensable right knee injury was held to be a producing cause of further injury to the right knee. In that case, the Appeals Panel cited Texas Workers' Compensation Commission Appeal No. 961055, decided July 19, 1996, commenting that:

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 August 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*.

In the instant case, Dr. BB gives conclusory opinions that the compensably injured left knee locked and this caused a fall which caused the right knee injury. Such an analysis does not mandate a finding that the right knee injury "naturally flowed" from the compensable left knee injury. In any event, as noted above, whether the compensable prior left knee injury was a producing cause of the later injury, or whether the right knee injury naturally results from the prior injury are questions of fact for the hearing officer to resolve. 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 or 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).

Claimant, on appeal, stresses that the subsequent right knee injury occurred within 30 days of the original injury. As we have noted, the length of time between the injuries was a factor to be considered by the hearing officer; however, there is nothing magical where injuries within 30 days are considered as having naturally flowed from the original injury and those over 30 days are not.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed, as reformed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge