

APPEAL NO. 001320

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 May 12, 2000. The hearing officer determined that the compensable right knee injury of \_\_\_\_\_, does not extend to a left ankle injury and that the appellant (claimant) had disability from January 14, 1999, through September 20, 1999, as a result of the compensable injury. The claimant appealed, expressing his disagreement with these determinations. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The parties agreed that the claimant sustained a compensable right knee injury on \_\_\_\_\_. He underwent arthroscopic surgery to repair a meniscus tear on April 13, 1999. The claimant testified that on May 30 or 31, 1999, his right knee gave way as he was descending a staircase at home causing him to fall and injure his left ankle. He has since been diagnosed with a left ankle tendon tear. It is his contention that this left ankle injury is also compensable.

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. 92553, decided November 30, 1992, we wrote:

. . . [T]he Court of Civil Appeals in the case of Maryland Casualty Co. v. Rogers, 86 S.W.2d 867 (Tex. Civ. App.-Austin 1935, writ ref'd) stated: "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.

In Texas Workers' Compensation Commission Appeal No. 983034, decided February 10, 1999, a case relied on by the carrier, we reversed the decision of the hearing officer that the claimant's compensable left knee injury extended to the low back as a result of a fall that occurred when her knee buckled. In that case with numerous citations to authority, we rendered a decision that the low back injury did not naturally result from the

compensable knee injury and distinguished this case from those involving follow-on injuries resulting from an altered gait or medical treatment.

Although the hearing officer found the case currently under consideration to be "squarely within the purview" of Appeal No. 983034, he noted that the claimant was not a persuasive witness and it was "not clear that the ankle injury occurred in the manner asserted by the Claimant here." This determination that the claimant essentially lacked credibility was based on his initial denials of prior workers' compensation claims, which he admitted under cross-examination, videotape evidence of him playing basketball during the time he was allegedly limping from his injuries, and his general demeanor on the witness stand. Section 401.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. His evaluation of the claimant's credibility and persuasiveness in his account of how he injured his left ankle provides a sufficient basis to affirm the decision of the hearing officer.

The claimant relied on Texas Workers' Compensation Commission Appeal No. 972079, decided November 20, 1997, for the proposition that his ankle injury naturally resulted from the buckling of the knee. In that case, the Appeals Panel affirmed the determination of the hearing officer that the claimant's right leg fracture was a compensable follow on injury to a compensable knee injury. Medical treatment for the compensable knee injury included the placement of hardware to treat a fractured patella. The decision was premised on extensive medical evidence that the hardware caused restrictions in the knee which in turn caused the fall. In the case we now consider, there was no evidence of hardware placement or that the arthroscopy was unusual. There was other medical evidence from carrier-selected peer review doctors that a person of the claimant's age and condition would have been expected to have fully recovered from the surgery in six to eight weeks. While the fall occurred more or less toward the end of this period of recovery, this evidence nonetheless supported the conclusion that there was no causal link between the right knee injury and surgery and any fall on the stairs. Thus, we cannot conclude that Appeal No. 972079 mandates a reversal in this case.

The hearing officer found disability based solely on the compensable right knee injury. Mr. K, the workers' compensation manager for the employer, testified that the results of a functional capacity evaluation (FCE) on September 20, 1999, showed that the claimant could perform his normal duties. The claimant disagreed and contended that he could not work even as of the date of the CCH because of both injuries. As late as April 25, 2000, Dr. G, the claimant's treating doctor, wrote that, despite the videotape, the claimant was "unable to perform his work duties as required."

The claimant had the burden of proving disability. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether disability existed was a question of fact for the hearing officer to decide and could be proved by his testimony alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. We have noted above the hearing officer's serious reservations about the claimant's credibility. The remaining

evidence of disability was contradictory. In his role as fact finder, the hearing officer was not persuaded that the claimant established disability after September 20, 1999. 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). Applying this standard of review to the record of this case, we find the evidence sufficient to support this determination.

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

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

CONCURRING OPINION:

I concur with affirming the hearing officer. We stated in Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993, that determining whether a subsequent injury was caused by the compensable injury is a question of fact. We have cited this case for this proposition many times. Here, the hearing officer found as a matter of fact that the compensable injury did not cause the subsequent injury. This determination is not contrary to the great weight and preponderance of the evidence. As far as I am concerned that is all the analysis necessary in the present case.

I do, however, believe that an injury from a fall caused by the fact a limb is weakened from a compensable injury may itself be found to be compensable. The supporting legal analysis for this proposition is cited in Appeal No. 93672, *supra*. I personally do not believe that weakened limb cases can be intelligently distinguished from altered gait cases.

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Gary L. Kilgore  
Appeals Judge