

## APPEAL NO. 001924

On June 13, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) compensable injury does not extend to the low back and that the respondent (carrier) specifically contested the issue of compensability. The claimant requests that the hearing officer's decision on both issues be reversed and that a decision on both issues be rendered in his favor. The carrier requests that the hearing officer's decision be affirmed.

### DECISION

Affirmed.

The parties stipulated that on \_\_\_\_\_, the claimant sustained a compensable left knee injury. The claimant began treating with Dr. P for his left knee injury on March 3, 1999, and Dr. P noted that the left knee injury occurred when the claimant's knee buckled when he slipped while picking up a metal panel. The claimant said that he had a work-related back injury in \_\_\_\_\_ or \_\_\_\_\_ and another work-related back injury in \_\_\_\_\_. He said he treated with Dr. P for the \_\_\_\_\_ back injury.

Dr. P referred the claimant to physical therapy for his knee injury and the physical therapist noted on April 8, 1999, that the claimant was complaining of low back pain with no known precipitating factor, and that the claimant was holding his low back on the left side. The physical therapist again noted on April 23, 1999, that the claimant was complaining of low back pain.

The claimant said that he had left knee surgery in May 1999 and that Dr. P referred him for physical therapy after the injury. He said that the physical therapy was conducted at a facility at Dr. P's office. Dr. A, who apparently examined the claimant at the rehabilitation center where the claimant was taking physical therapy, wrote on August 19, 1999, that the claimant was complaining of left knee and back pain. On September 14, 1999, Dr. A noted that the claimant still had pain in his lumbosacral area and diagnosed the claimant as having left knee internal derangement and lumbosacral radiculopathy.

The claimant testified that in October 1999, on a date he did not recall, he was undergoing physical therapy at Dr. P's facility when the treadmill he was walking on unexpectedly sped up, causing him to lose his balance, and that he fell forward and caught himself. The claimant said that when he fell forward he felt something pop in his back and that since that time he has had pressure, popping, and tightness in the right side of his lower back. The claimant said that his pain after the October treadmill incident is not in the same location as the back pain he had before that incident, which he said was in his mid and upper back.

The claimant said that CN was also taking physical therapy at Dr. P's facility in October and that CN witnessed the treadmill incident. In a written statement, CN stated that he was in therapy when he witnessed the claimant slip on the treadmill.

Dr. P saw the claimant on October 13, 1999, and wrote that the claimant complained of low back pain and left knee pain; and that the claimant had injured his back a few weeks back while in therapy for his left knee. Dr. P stated that the claimant felt like the treadmill might have sped up and caused him to lose his balance and that he was able to regain his balance on the supporting bars "though evidently injured his back in the process." In a letter dated November 15, 1999, Dr. P stated that, according to the claimant, the claimant jerked his low back using the treadmill for rehabilitation of his left knee and since that time the claimant has been experiencing low back pain. In December 1999, Dr. P diagnosed the claimant as having lumbar facet syndrome and lumbar spine myositis/myalgia and recommended conservative treatment. Dr. P again stated that, according to the claimant, his low back problem began in October 1999 while in therapy on the treadmill.

Dr. P referred the claimant to Dr. M, who wrote in March 2000 that the claimant told him of an injury that sounded like an asymmetrical step with his right leg while undergoing rehabilitation for his knee on a treadmill at Dr. P's facility. Dr. M wrote that examination of the claimant showed no real lumbar pathology, but that the claimant does have severe sacroiliac dysfunction on the right and that he believes that the claimant sustained a right sacroiliac joint injury.

Dr. L, who apparently saw the claimant for the claimant's knee injury, wrote in March 2000 that the claimant had a knee injury but that he, Dr. L, does not believe that the claimant's back injury is related to his work injury. Dr. L did not mention anything about whether the claimant sustained an injury on a treadmill while undergoing therapy for his knee.

The claimant's contention at the CCH was that he sustained a compensable low back injury because the low back injury occurred during physical therapy for his compensable left knee injury when he lost his balance on the treadmill and fell forward. The carrier's contention was that the claimant did not sustain a low back injury while in physical therapy for the compensable knee injury.

In Texas Workers' Compensation Commission Appeal No. 950938, decided July 24, 1995, the Appeals Panel noted that the 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 therefore, causes other injuries which render the employee incapable of work. However, whether the claimant sustained an injury was a question of fact for the hearing officer to determine from the evidence presented.

While there is evidence that the claimant may have had a minor accident while on the treadmill, that does not compel a determination that the claimant sustained physical harm or damage to his low back in that incident. And while there is evidence that the claimant may have a low back injury or condition, that does not compel a determination that that injury or condition was caused by an accident on the treadmill, especially in light of the complaints of low back pain that predated that incident. With regard to the medical evidence that the claimant contends supports his claim, it has been held that a fact finder is not bound by the testimony of a medical witness where the credibility of that testimony is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.).

The hearing officer found that the claimant failed to establish through credible evidence that he sustained damage or harm to his lower back/lumbosacral spine region as a result of losing his balance on a treadmill while in therapy for his compensable injury in early October 1999, and the hearing officer concluded that the compensable injury does not extend to an injury to the low back. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer's finding that the claimant failed to establish through the credible evidence that he sustained damage or harm to his lower back as a result of losing his balance on the treadmill indicates that the hearing officer did not find the claimant's testimony credible with regard to whether he sustained an injury and that the hearing officer was not persuaded by the medical reports that were based on what the claimant told his doctors about being injured on the treadmill. We conclude that the hearing officer's decision that the claimant's compensable injury does not extend to an injury to the low back is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The claimant also appeals the hearing officer's decision that the carrier specifically contested the issue of compensability. The hearing officer's decision on that issue is sufficiently supported by the carrier's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), wherein the carrier states that the claimant's back injury is not a direct and natural result of the compensable injury. In any event, in Texas Workers' Compensation Commission Appeal No. 001107, decided June 30, 2000, the Appeals Panel noted that in the preamble to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §124.3 (Rule 124.3), effective March 13, 2000, the Texas Workers' Compensation Commission had construed Section 409.021 as not providing for waiver of extent of injury.

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Kenneth A. Huchton  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge