

## APPEAL NO. 002186

On August 10, 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 issue at the CCH was whether the appellant's (claimant) compensable injury of \_\_\_\_\_, extends to include the seizure disorder and lumbar spine injury. The parties stipulated that the seizure disorder is part of the compensable injury of \_\_\_\_\_. The claimant requests that the hearing officer's decision that the compensable injury of \_\_\_\_\_, does not extend to or include the lumbar spine injury be reversed and that a decision be rendered that the compensable injury extends to include the lumbar spine injury, or, in the alternative, that the case be remanded to the hearing officer. The respondent (carrier) requests that the hearing officer's decision be affirmed.

### DECISION

Affirmed.

The claimant testified that he had a lower back injury in \_\_\_\_\_, that he was off work for two or three weeks for that injury, that he returned to work in 1990, and that, while he has had some ongoing symptoms from that injury, they were not significant.

On \_\_\_\_\_, the claimant was working as a manufacturing engineer when he sustained a compensable injury. According to medical records, he walked into a beam on that day, striking his forehead and falling to the ground. Dr. A diagnosed the claimant as having a closed head injury as a result of the April 1997 injury. An MRI of the claimant's right shoulder done in May 1997 was normal, an MRI of the claimant's head done in May 1997 showed sphenoid sinusitis but was otherwise normal, and an electroencephalogram done in May 1997 was reported to be within normal limits. An MRI of the claimant's cervical spine done in August 1997 showed protrusions or herniations at C4-5 and C5-6. Dr. D, wrote in October 1997 that, according to the claimant, the claimant sustained compensable injuries to his right shoulder, neck, and head in the April 1997 accident at work. In January 1998, Dr. H, diagnosed the claimant as having postconcussion syndrome, cervicocranial syndrome, cervicobrachial syndrome, a shoulder injury, a head injury, and headaches/cephalalgia.

In February 1998, Dr. W, a referral doctor, wrote that the claimant has residual effects from his closed head injury and needs biofeedback training. It appears that the requested biofeedback training was denied by the carrier.

The claimant said that prior to his \_\_\_\_\_, injury, he did not have dizzy spells but that since that injury he has had dizzy spells. He said that on \_\_\_\_\_, while he was at home talking to his wife, he had head pain, felt dizzy, and fell to the floor on his tailbone, injuring his lower back. The claimant's wife testified that on the date in question, she was talking to the claimant at home when the claimant said that he was not feeling well

and started to walk to another room. The claimant's wife said that she heard the claimant fall and that she found him on the floor sitting on his buttocks and the claimant told her in slurred speech that he had hurt his back when he fell. The claimant said that the dizzy spell he had at home on \_\_\_\_\_, was the same as other episodes he has had since his April 1997 injury but that he had always been able to grab onto something in the past to keep from falling down. He said he was unable to grab onto anything when he had the dizzy spell on \_\_\_\_\_. The claimant and the claimant's wife referred to the claimant's dizzy spells as seizures. The parties stipulated at the CCH that the claimant's seizure disorder is part of his \_\_\_\_\_, compensable injury.

The claimant said that after he fell at home on \_\_\_\_\_, his lower back pain became more frequent, intense, and persistent. Dr. W wrote on September 21, 1999, that the claimant told him that he had had severe head pain that had knocked him off his feet and onto his buttocks and that the claimant complained of lower back pain. Dr. AT, the claimant's treating doctor, noted in November 1999 that the claimant appeared to be neurologically intact and that the claimant wanted to continue on his current medication management. Dr. W wrote in April 2000 that the claimant's head injury of \_\_\_\_\_, resulted in a seizure disorder and that caused him to have a blackout that aggravated his low back and neck pain.

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. 992667, decided January 13, 2000, the Appeals Panel wrote that in Texas Workers' Compensation Commission Appeal No. 971849, decided October 20, 1997, the Appeals Panel had surveyed cases involving follow-on injuries and that in that decision we held that the "naturally flowing" standard is the appropriate standard to be used in these types of cases, citing Maryland Casualty Co. v. Rogers, 86 S.W.2d 867 (Tex. Civ. App.-Amarillo 1935, writ ref'd). The Appeals Panel has stated that it has not endorsed a blanket concept that brings within the ambit of compensable injury every consequence that arguably may not have occurred "but for" the compensable injury. Texas Workers' Compensation Commission Appeal No. 990088, decided February 25, 1999.

The hearing officer found that, following the September 1999 fall at home, the claimant's low back condition worsened. The claimant appeals the hearing officer's findings that the claimant did not establish that the \_\_\_\_\_, incident at home flowed naturally from the compensable injury and that the low back injury on \_\_\_\_\_, is not a direct and natural result of the original compensable injury of \_\_\_\_\_. The claimant also appeals the hearing officer's conclusion that the compensable injury of \_\_\_\_\_, does not extend to and include the lumbar spine injury. For the first time on appeal, the claimant claims that he was without medication for his seizure disorder on \_\_\_\_\_, due to the carrier's dispute of his seizure disorder. The claimant did not testify concerning a lack of medication for his seizure disorder and does not refer us to what in the hundreds of pages of medical records would support that assertion. The claimant contends that the

testimony and medical reports establish that his fall at home in September 1999 and resulting back injury are related to his injury of \_\_\_\_\_.

The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). Apparently, the hearing officer was not persuaded by the evidence that the claimant's back injury at home two and one-half years after his accident at work naturally resulted from his compensable injury. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. We conclude that the hearing officer's decision is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge