

APPEAL NO. 010830

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 26, 2001. With regard to the only issue before him, the hearing officer determined that the appellant's (claimant) compensable neck and low back injury does not extend to nor include an injury to his right thumb, right shoulder, or right knee.

The claimant appeals, contending that three falls some years after his compensable injury were caused or naturally flowed from the compensable injury. The claimant also argued that the respondent (carrier) had affirmatively accepted the right thumb and right shoulder injuries separate and apart of any waiver issue. The carrier responds, urging affirmance and contending that "waiver" was not an issue before the hearing officer.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable neck and low back injury on _____, and that he reached maximum medical improvement on January 13, 1999. The claimant had cervical spine surgery at the C3 to C6 levels on December 1, 1997, and medical records indicate that the claimant continued to have back pain. On April 7, 1999, the claimant had additional cervical spine surgery. The claimant's treating doctor, Dr. M, in an August 24, 1999, report, urged the claimant "to do a fair amount of walking and stretching over the next 4 weeks." The claimant testified that on _____, while he was walking, his right leg "gave way" and he fell, breaking his right thumb. There is evidence that the carrier initially accepted liability for the thumb injury and paid medical benefits. On _____, the claimant again fell when his leg gave out, while he had his hand in a cast due to the thumb injury, and sustained a right shoulder injury. The carrier investigated and apparently initially accepted liability for the right shoulder injury. The claimant had lumbar spine surgery on February 15, 2000, for his compensable low back injury. Sometime in November 2000, the claimant fell again, in his bathroom, striking his right knee on a cabinet and sustaining a cut left eyebrow. Dr. M, after initially commenting in a note dated November 21, 2000, that "[t]his would not be Comp related," in a report dated December 5, 2000, noted that the claimant's "leg has buckled on him many times . . . [and] [t]his should be covered by his compensable injury."

The medical evidence is conflicting regarding the weakness in the claimant's legs. Dr. M states that the falls and injuries are due to weakness in the claimant's legs, ostensibly due to the claimant's compensable low back injury. Other doctors find no sensory or motor weakness in the claimant's legs. The hearing officer terms the falls as "idiopathic falls" and "not the direct or natural result of the Claimant's compensable low back injury." The carrier cites various Appeals Panel decisions, including Texas Workers' Compensation Commission Appeal No. 961055, decided July 19, 1996, for factors that the hearing officer could look to in determining the compensability of a "follow-on" injury,

including whether there was a distinct nonwork-related activity involved in the subsequent injury, whether the same body part was involved, the length of time between the compensable injury and the subsequent injury or injuries, and whether there was medical evidence of causation. Several cases discuss the term “naturally caused” and we have frequently noted that the determination regarding a follow-on injury is a factual determination for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 990140, decided March 8, 1999; Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993.

Perhaps what makes this case somewhat different is that the carrier here affirmatively accepted liability for the right thumb and right shoulder injuries. Waiver of a timely contest of compensability was not an issue before the hearing officer, and because the carrier had accepted liability for the thumb and shoulder, the real question was whether the carrier is now estopped from denying liability. The fact that the carrier initially accepted injury to certain body parts does not then preclude the carrier from investigating and later disputing those body parts.

We find that the hearing officer did not err in determining that the compensable neck and low back injury did not include the right thumb, right shoulder, and right knee.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge