

APPEAL NO. 021169
FILED JUNE 27, 2002

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 April 18, 2002. The hearing officer determined that the compensable injury sustained by the respondent (claimant) on _____, extends to a fractured left femur. The appellant (self-insured) contends on appeal that the fractured femur should not be included as part of the compensable injury because it resulted from "a distinct non work-related activity involved in the subsequent injury" and because "there is a lack of medical probability evidence establishing the necessary causation." The appeal file contains no response from the claimant.

DECISION

Reversed and rendered.

The evidence reflects that the claimant sustained a compensable injury on _____, when she slipped and fell at work, breaking her left knee. Surgery was performed on the knee and the claimant underwent physical therapy for a period of time thereafter. The medical evidence indicates that, subsequent to the surgery, the claimant experienced a loss of strength in her left quadriceps muscle and exhibited a poor gait pattern. According to the claimant, on _____, she was at home when her left leg gave out while walking to the bathroom, causing her to fall and fracture her left femur. Surgery was performed on the left femur 11 days later. The claimant admitted into evidence a report from the doctor who performed the femur surgery, who opined that the femur fracture was "a direct result of the original fractured patella with incomplete recovery of muscle strength and range of motion." Relying, in part, on this report the hearing officer determined that the femur fracture was a direct result of the incomplete rehabilitation from the knee fracture and concluded that the compensable knee injury extends to the left femur fracture.

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 added.) The crucial question for resolution in the present case is whether the claimant's _____, femur injury "naturally resulted" or naturally arose from the compensable left knee injury. 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), the court 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 therefrom, 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:

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." [Citation omitted.] 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.

The Appeals Panel has previously addressed situations where follow-on injuries occur to the same body part or to other body parts and are asserted to follow from a weakened state brought about by the compensable injury. 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 _____, 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. That decision noted that the Appeals Panel has many times considered cases in which instability, weakness, or lowered resistance from a compensable injury allegedly resulted in an injury to another body part. The decision then cited the following cases where the Appeals Panel determined that the claimed follow-on injuries were not compensable: Appeal No. 94067, *supra*, and Texas Workers' Compensation Commission Appeal No. 92553, decided November 30, 1992, involving injuries from an unstable or buckling knee; Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993, involving an injury from a fall claimed to have been caused by a foot giving way; Texas Workers' Compensation Commission Appeal No. 941575, decided January 5, 1995, involving a compensable spinal fracture with residual paraplegia which left the employee with no motor or sensory function below the waist and his leg was burned while sitting next to a hot grill at home; and Texas Workers' Compensation Commission Appeal No. 93574, decided August 24, 1993, in which compensability was denied for knee and back injuries resulting from the employee's slipping in a shower after swimming as a part of post-surgery therapy. The Appeals Panel has not endorsed a blanket concept that brings within the ambit of the compensable injury every consequence that arguably may not have occurred "but for" the compensable injury. Appeal No. 941575, *supra*.

We discern no appreciable difference between the facts contained in the aforementioned decisions and those in the present case. The claimant's femur injury was not a direct and natural result of the original compensable knee injury, rather, it resulted from instability, weakness, or lowered resistance from the compensable injury. Applying the reasoning of the decisions cited above, such injury is not compensable. Accordingly, we reverse the decision and order of the hearing officer and render a new decision that claimant's compensable injury does not extend to the left femur fracture.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Daniel R. Barry
Appeals Judge