

APPEAL NO. 090067
FILED FEBRUARY 20, 2009

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 December 17, 2008. The hearing officer determined that the compensable injury of _____, extends to a left ankle fracture.

The appellant (self-insured) appeals, contending that the left ankle fracture should not be included as part of the compensable left knee injury because it is not a "direct and natural result" of the left knee injury. The respondent (claimant) responds, urging affirmance.

DECISION

Reversed and rendered.

The parties stipulated that on _____, the claimant sustained a compensable injury in the form of a left knee meniscus tear which was repaired on July 12, 2007. The facts are not in dispute. The medical records support the claimant's contention that he continued to complain of left knee pain after the July 12, 2007, left knee surgery and wore a knee brace. Diagnostic testing on August 13, 2007, revealed a Baker's cyst which was subsequently drained. A medical report dated September 17, 2007, notes that the claimant "has improved since the Baker's cyst was drained a week ago." However, the claimant continued to have documented left knee complaints. A medical report dated October 25, 2007, notes "pain at the patella" particularly after walking. The report further states that the claimant was to continue with his present exercise program on his own, but he "should avoid stair climbing, kneeling or squatting." The claimant testified that on November 16, 2007, as he was walking down three stairs on his front porch his left knee "just gave out" and he fell, fracturing his left ankle. The claimant had surgery on his left ankle on December 3, 2007. In a follow-up consultation dated May 20, 2008, Dr. K agreed with the claimant that the claimant's "knee was significantly weakened and painful, gave way, causing him to injure his left ankle and subsequently undergoing surgeries." The hearing officer found that the claimant "sustained a left ankle fracture as a direct and natural result of the compensable injury of _____."

The self-insured cites Appeals Panel Decision (APD) 021169, decided June 27, 2002, a case with similar facts. In APD 021169, the injured worker sustained a compensable left knee injury and after knee surgery experienced loss of strength and exhibited a poor gait pattern. Some four and a half months later the injured worker's left leg gave out while walking to the bathroom, causing her to fall and fracture her left femur. The Appeals Panel, in that case, cited the definition of injury in Section 401.011(26) 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 Appeals Panel, in APD 021169, cited 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), APD 94067, decided February 28, 1994, and Maryland Casualty Company v. Rogers, 86 S.W.2d 867, 871 (Tex. Civ. App.-Austin 1935, writ ref'd). Rogers, was quoted as stating:

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.

In APD 950524, decided May 19, 1995, the Appeals Panel discussed the concept of follow-on injuries occasioned by falls alleged to be related to compensable injuries. In that case, the claimant sustained a compensable knee injury; the knee later gave way, causing the claimant to fall into a wall injuring his neck and arm. In reversing the hearing officer's decision which found the subsequent injuries compensable, the Appeals Panel rejected the concept that brings within the ambit of compensable injury every consequence that arguably may not have occurred "but for" the original compensable injury (citing APD 941575, decided January 5, 1995), and said that, though an injury may affect a person's resistance, it will not mean that a subsequent injury outside the workplace is compensable (citing APD 92553, decided November 30, 1992; and Rogers, *supra*). The Appeals Panel cited several cases where compensability of a subsequent or follow-on injury was upheld, noting that such cases involved a direct flow of events showing a causal relationship-e.g. a back condition caused by a changed or altered gait following a knee injury, or an injury resulting from physical therapy treatment for a compensable injury. See also APD 041459, decided August 2, 2004.

In view of our precedent and the evidence in this case, we hold that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We reverse the hearing officer's determination that the compensable injury of _____, extends to a left ankle fracture and render a new decision that the compensable left knee injury of _____, does not extend to a left ankle fracture.

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

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge