APPEAL NO. 961055

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held in (city), Texas, on May 15, 1996, after which the hearing officer, (hearing officer), held that the claimant's compensable injury extends to an injury to her neck. The carrier has appealed, contending that the hearing officer applied the wrong test, and citing earlier cases in support of its position. The claimant contends that the medical evidence supports her position and cites Appeals Panel decisions in support.

DECISION

Reversed and rendered.

The facts of this case are essentially undisputed and will only be briefly summarized. Claimant suffered a compensable back injury when she fell at work on (date of injury). The claimant stated, and the medical evidence indicates, that in late 1994 or early 1995 her right leg began giving way. An EMG and NCV ordered in January 1995 were normal, but in April her doctor recorded another fall which produced increased back pain. Because of her problems with stumbling and falling, in July 1995 her doctor gave her a cane to use. On (subsequent date of injury) the claimant stumbled while at home, catching herself by the arms, after which she began experiencing neck pain. She agreed at the CCH that she was not working at the time and was not using the cane. The claimant said that treatment for her neck has been denied by the carrier. A February 27, 1996, letter from Dr. M stated that claimant fell because of the back and leg pain, sustaining a neck injury, and that "[t]here is a direct causal relationship between the back injury, the fall and the patient's cervical complaints."

The hearing officer held for the claimant, finding that the fall at home was a direct and natural result of her original injury. He also wrote that, "[b]ut for the weak leg, the claimant would not have experienced episodes of falling. But for the fall of (subsequent date of injury), the claimant's neck would not be injured."

In its appeal the carrier challenges the "but for" standard used by the hearing officer, and cites to Appeals Panel decisions which it says have found similar injuries noncompensable.

Texas Workers' Compensation Commission Appeal No. 92553, decided November 30, 1992, involved a similar fact scenario in which the claimant, who had suffered a compensable knee injury, fell while walking at home and injured his wrist and thumb. In affirming a determination of noncompensability, the panel noted that the 1989

Act's definition of "injury" includes infections and diseases naturally resulting therefrom, and also cited language in Maryland Casualty Co. v. Rogers, 86 S.W.2d 867 (Tex. Civ. App.-Austin 1935, writ ref'd) stating that "the fact that an injury may affect a person's resistance will not mean that a subsequent injury outside the workplace is compensable, where the subsequent disease or infection is not one which flowed naturally from the compensable injury."

Another case with similar facts, Texas Workers' Compensation Commission Appeal No. 950524, decided May 19, 1995, involved a claimant with a compensably injured knee which would give way on occasion. This caused him to fall at home, which resulted in shoulder problems and a herniated cervical disk. In reversing and rendering a decision that the latter injuries were not compensable, the Appeals Panel cited Appeal No. 92553, *supra*, and Texas Workers' Compensation Commission Appeal No. 94067, decided February 28, 1994, where a back injury arising from a compensably injured knee "locking up" was held noncompensable. It also cited Texas Workers' Compensation Commission Appeal No. 941575, decided January 5, 1995, which reversed and rendered a decision that the claimant, who had no sensation below the waist from a compensable injury, was not compensably injured when a spark from a home cookout burned him. The latter case considered whether the subsequent injury was the direct and natural result of the original compensable injury and rejected the concept that brings within the ambit of compensable injury every consequence that arguably may not have occurred "but for" the original injury.

Other cases referenced in Appeal No. 950524, *supra*, included Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993, which upheld a determination of noncompensability for a back injury which arose after the claimant fell at home due to her foot giving way after a compensable foot injury. It distinguished Texas Workers' Compensation Commission Appeal No. 93414, decided July 5, 1993, which involved a back condition arising from an altered gait following a compensable knee injury, and Texas Workers' Compensation Commission Appeal No. 92358, decided November 9, 1992, concerning an injury arising from physical therapy, as involving "a direct flow of events in showing causal relationship." Crucial to the determination of Appeal No. 950524, *supra*, however, was the fact that there was a distinct, non work-related activity involved in the subsequent injury, the injury was to a distinctly different body part, there was a lengthy period of time between the injury and the claimed subsequent injury, there was at most only a degree of weakening or lowered resistance, and there was a lack of reasonably medical probability establishing the necessary causation (as opposed to a doctor's "but for" analysis).

While in the instant case Dr. M opined as to a direct causal relationship between the two injuries, we believe the facts of this case falls squarely within those where noncompensability was found under the precedent of the above-cited decisions. Accordingly, we reverse the decision and order of the hearing and render a new decision that any neck injury arising from the (subsequent date of injury) fall was not compensable.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge