APPEAL NO. 980004

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 on December 10, 1997. With respect to the only issue before him, the hearing officer determined that respondent (claimant) continues to suffer effects from his compensable October 1991 injury, entitling him to medical benefits.

Appellant (carrier) appeals, first touching on the question whether medical benefits should be resolved in the dispute resolution process, and then arguing that claimant sustained a new injury which was not the "direct and natural" result of the compensable injury citing numerous Appeals Panel decisions and court cases. Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The file does not contain a response from the claimant.

DECISION

Affirmed.

The background facts are relatively simple and undisputed. The parties stipulated that claimant sustained a compensable injury to his right knee (when he stepped in a "hole" (apparently an oil changing pit)) on _____. A diagnostic arthroscopy in April 1993 disclosed "an interstitial tear of the anterior cruciate ligament" and other internal knee derangements. Claimant was determined to have reached maximum medical improvement (MMI) on July 29, 1993, with a 10% impairment rating (IR). Claimant returned to work and full activities and in a report dated October 25, 1993, (Dr.L), the treating surgeon, stated that he had recommended outpatient physical therapy, muscle strengthening and for claimant "to undergo brace fabrication as he does have an anterior cruciate deficient knee" and that the knee brace is "necessary to prevent further injury to his knee." Claimant testified that he attended some "work hardening" but it was unclear whether claimant wore the recommended brace. Claimant testified that in 1994 and 1995 his knee would occasionally swell but the swellings would go away with use of an ice pack. Claimant testified that in August 1996 while jogging his knee "buckled" and that the subsequent swelling did not go away with the use of an ice pack. Claimant said that he attempted to see Dr. L at the time but treatment was refused. Claimant eventually was able to see Dr. L on November 5, 1996.

In a report dated November 11, 1996, referencing the November 5th visit, Dr. L noted the knee buckling "one month ago" and stated:

> My initial impression based on examination is one of a recurrent strain with a question of a progression of internal derangement symptoms. I also feel it is possible that he may have continued to stretch out the anterior cruciate ligament which was noted to have sustained an initial interstitial tear on his

> initial arthroscopy. I have recommended we obtain insurance approval for an MRI scan. It is possible that repeat arthroscopic evaluation, exam under anesthesia may be necessary.

In another report dated February 19, 1997, Dr. L repeated essentially the same opinion stating that in his opinion claimant "continued to stretch out this ligament causing the recurrent symptoms . . . ." In another report dated October 1, 1997, Dr. L repeated his previous comments and added "I feel this last episode is a recurrence of his initial injury of _____ with a possible progression of internal derangement symptoms. I do not feel this is a new injury." Dr. L further explains in an October 27, 1997, report:

> It is our contention that his progressive problems at this time are related to slow worsening of knee function as a result of a chronic stretching out of the anterior cruciate ligament with resultant tendency toward reinjury, giving way and subluxation.
>
> In summary, it is not unusual for individuals sustaining anterior cruciate injuries to undergo progressive functional deterioration over time as a remnant of the torn anterior cruciate ligament stretches out and becomes functionally impossible.

Carrier offers a medical record peer review dated October 10, 1997, performed by (Dr. W), who after review of all the records concludes "[i]n my opinion, and in all medical probability, the claimant's current knee complaints are not related to the original injury of _____." Carrier also submits the opinion of (Ms. V), a nurse "Medical Cost Consultant" who states that in her "Orthopedic Medical Advisor (M.D.)" (not identified) opinion that Dr. L's explanation is "untenable" because interstitial tears of the cruciate ligament tend to heal, "not cause a plastic deformation," and that claimant's current complaints are not related to the compensable injury.

The hearing officer considered all the medical evidence and determined that the preponderance of the expert medical evidence proved that the original compensable knee injury "was a producing cause of Claimant's current knee condition and symptoms." Section 408.021 provides that an injured employee "is entitled to all health care reasonably required by the nature of the injury as and when needed." This provision is frequently referred to as the lifetime medical benefit provision. We do note that there must be proof of medical causation or relationship to the compensable injury.

Carrier first comments on jurisdiction stating that "there appears to be somewhat a split of authority whether these issues are properly before the Division of Hearings . . . [or] medical review . . . ." While this author judge believes this matter could have more appropriately been resolved through medical review procedures, however, in view of the fact that the issue is framed as a legal issue we are reluctant to remand this back for medical review resolution.

Carrier cites some cases for the proposition that a follow-on injury must be the "direct and natural result of the compensable injury." While we may not disagree with that proposition as stated, we would point out that this case is not a "follow on" injury case, at least from claimant's perspective. Carrier cites language from Texas Workers' Compensation Commission Appeal No. 971985, decided November 7, 1997, a case having somewhat similar facts (a compensable May 1995, back, leg, and knee injury where the leg "gave way" in February 1997) however, we note that in that case the Appeals Panel affirmed the hearing officer's decision that the claimant was still suffering from the effects of the compensable May 1995 injury and that the evidence does not compel or support a different conclusion. That case refers to Texas Workers' Compensation Commission Appeal No. 971849, decided October 20, 1997, for a discussion of direct and natural result and citations to prior Appeals Panel decisions on the issue. Appeal No. 971849 involved a case where the claimant, had a compensable back injury, which according to claimant, caused an altered gait, which caused claimant to fall, which caused claimant to hit a tray or drawer which had some nails or screws, which flew up and hit claimant in the eye causing the claimed eye injury. The Appeals Panel reversed the hearing officer stating that the eye injury is simply too remote and removed from the compensable back injury "combined with a lack of medical evidence of causability." Carrier also quotes from Texas Workers' Compensation Commission Appeal No. 941575, decided January 5, 1995, also a case involving a follow on injury completely unrelated to the compensable injury. Carrier cites a number of other Appeals Panel decision and cases, none of which are particularly persuasive in this case.

In this case, carrier is liable for lifetime medical benefits (which is all that claimant has claimed) reasonably required by the nature of the compensable injury. The issue then becomes one of causation of whether claimant's symptoms are caused by the compensable 1991 injury. Claimant's treating surgeon, Dr. L, in a number of reports explains how the compensable knee injury was stretched or aggravated by relatively normal activities of daily living, including the jogging incident. Carrier submitted evidence in the form of peer review reports which would indicate no relationship to the compensable injury and that interstitial tears would tend to heal and not get worse. The hearing officer chose to give greater weight to Dr. L's medical evidence than to that of the peer review reports. The hearing officer is the sole judge of the weight and credibility to be given to the evidence, including medical evidence. *See* Section 410.165(a) and Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984 no writ).

In this case there was a jogging incident which carrier characterizes as an intervening cause. A carrier may indeed be relieved of liability for an aggravation and/or complications of the original compensable injury due to a subsequent noncompensable event provided that the carrier can prove that the subsequent noncompensable incident is the sole cause of claimant's current condition. Carrier cites a number of Appeals Panel decisions for the proposition that the claimant must establish that the compensable injury was "a producing cause of the disability" (or in this case the need for medical treatment). Again, we do not disagree with that proposition, as stated, but point out that the claimant

has met that burden in this case through Dr. L's reports establishing such causation. The hearing officer obviously chose to give little weight to the peer review reports and the evidence strongly supports the position that the original compensable injury was at least a producing cause. We would note that Dr. L early on, in 1993, recommended physical therapy and a knee brace "to prevent further injury to the knee." Apparently even then Dr. L considered the possibility of further injury to claimant's knee, and presently attributes claimant's symptoms to "progressive functional deterioration."

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge