BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

GLENDA BURBANK	)	
Claimant	)	
VS.	)	
	)	Docket No. 223,983
UNIFIED SCHOOL DISTRICT 259	)	
Respondent	)	
Self-Insured	)	

ORDER

Respondent appeals from two preliminary hearing Orders entered by Administrative Law Judge Nelsonna Potts Barnes on September 17, 1997.

ISSUES

The sole issue on appeal is whether claimant's injuries arose out of and in the course of her employment with respondent. More specifically, the issue is whether claimant's injury of June 17, 1997, when she fell while exiting her son's truck at home, is a compensable consequence of an earlier compensable hip injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Orders by the Administrative Law Judge should be affirmed.

FINDINGS OF FACT

(1) On June 17, 1997, claimant fell while getting out of her son's truck at home. She suffered a compression fracture of L-1 and fractured several ribs.

(2) Claimant had one year earlier, on June 19, 1996, fractured her left hip when she fell in the course of her work for respondent.

(3) Duane A. Murphy, M.D., treated claimant for the earlier hip fracture. On June 20, 1996, Dr. Murphy reduced the fracture and fixed it with a compression screw and plate. After the surgery claimant experienced residual symptoms in her left leg, including pain and weakness. Dr. Murphy provided follow-up care and saw claimant periodically over the next approximately one year.

(4) The follow-up care by Dr. Murphy attempted to address continuing complaints of pain and weakness in the left leg. In July 1996, Dr. Murphy recommended physical therapy to strengthen the leg. Claimant returned to work in the fall of 1996 but Dr. Murphy took her off again in late December 1996 to rest the leg. At the same time, he ordered a bone scan. From the scan, Dr. Murphy ruled out a loose prosthesis and found no evidence of compression fracture.

(5) During the treatment by Dr. Murphy, claimant complained that the leg would give way. She first complained of this problem on July 17, 1996, shortly after the surgery. In a July 30, 1996, letter to A. Jason Trego, M.D., Dr. Murphy notes claimant has fallen because of weakness in the leg. Dr. Murphy's notes of August 27, 1996, indicate claimant walked with a limp. In October 1996, claimant mentioned difficulty walking down stairs, and Dr. Murphy noted some atrophy. In December 1996, claimant continued to complain that her leg gave way. In May 1997, after claimant had been off work for several months, Dr. Murphy again notes complaints of pain and weakness but concludes there is no further treatment he can provide. He suggested the possibility of an additional bone scan and agreed to see claimant again upon request.

(6) Claimant returned to work on June 6, 1997, doing bookkeeping. On June 17, respondent asked her to supervise some children who could not go with other children to a program outside the school. Claimant became involved working with the kids in the gym and began experiencing cramping in her left leg. As a result of the cramping, she decided to leave work early and called her son to take her home. Her leg first gave way as she left the building, but she did not fall at this time and was not injured. Claimant fell and was injured, as stated above, exiting from her son's truck at home.

(7) The Appeals Board finds, as claimant has testified, that the fall claimant suffered as she exited from her son's truck occurred when her left leg gave way as she stepped to the ground with her weight on the left leg. The Board further finds that her leg gave way as a direct result of residual pain and weakness from her hip fracture of June 19, 1996.

(8) The Board also finds that the elevation of the truck, at least 24 inches off the ground, was not a significant factor in causing the fall and subsequent injury. Claimant testified that when she reached down with her leg, her foot was 3 to 4 inches off the ground. Claimant also testified it was easier to get in and out of this truck because she did not have to push up with her leg. In this case she let herself down and she fell when the leg gave way as she put weight on it. The event was not, in our view, more than the ordinary use of the leg.

CONCLUSIONS OF LAW

(1) Every natural consequence of a compensable injury is also compensable, even a new and distinct injury, if it is a direct and natural result of the original compensable injury. Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972); Reese v. Gas Engineering & Construction Co., 219 Kan. 536, 548 P.2d 746 (1976).

(2) A subsequent reinjury of a compensable injury is not compensable if it results from a new and separate accident. Stockman v. Goodyear Tire & Rubber Co., 211 Kan. 260, 505 P.2d 697 (1973).

(3) The Board must, therefore, determine whether claimant's injuries result from a new and separate accident or, in the alternative, were a direct and natural result of the original compensable injury to claimant's hip in June of 1996. The Board finds it difficult to discern, from the appellate decisions, consistent criteria for making this distinction. Respondent cites, for example, Wietharn v. Safeway Stores, Inc., 16 Kan. App. 2d 188, 820 P.2d 719, *rev. denied* 250 Kan. 808 (1991). In that case, claimant injured a knee in December 1983 and returned to work in May 1984. In June 1984 his previously injured knee gave way while lifting a 60-pound case of vegetables at work. Claimant fell backwards and injured his back. The court ruled that the back injury was not a compensable consequence of the original injury, i.e., it was not a direct and natural result of the original injury. As a part of its analysis, the court stated it was of primary importance that the injury was to a different part of the body. On the other hand, the fact the second injury involved a different body part was apparently not considered significant in Chinn v. Gay & Taylor, Inc., 219 Kan. 196, 547 P.2d 751 (1976). In that case, the court found compensable a back injury resulting from the limp after a compensable knee injury. The court reached a similar conclusion in Reese v. Gas Engineering & Construction Co., *supra*.

In Stockman, *supra*, claimant reinjured his back when he tossed a tire in the trunk of a car. The court ruled this was not a compensable result of the first injury and distinguished earlier cases on the grounds that they involved gradual increases in disability from the original injury. However, in Gillig v. Cities Service Gas Co., 222 Kan. 369, 564 P.2d 548 (1977), the Supreme Court affirmed an award for a knee injury which the claimant had aggravated when he stepped from a tractor while not working for respondent and again while watching television at home. The aggravation was not gradual.

The Board also notes that Helms v. Tollie Freightways, Inc., 20 Kan. App. 2d 548, 889 P.2d 1151 (1995), involved an injury which was to another part of the body and was from a sudden event. In that case, claimant first suffered a compensable wrist injury and later injured her back in an automobile accident while on her way to therapy for the wrist. Although the court describes this as a separate accident for purposes of insurance coverage, it was agreed that it was a compensable consequence of the first injury.

(4) In spite of these apparent inconsistencies, the test remains one of determining whether the new injury is a "direct and natural result" of the primary injury or was from a "new and separate accident." The former is a compensable consequence of the first injury and the second is not. Examination of the facts of these cases suggests that a "separate accident" can logically be defined as an accident involving independent trauma, i.e., trauma independent from the original injury, as a cause of the new injury. In the Stockman case, for example, the claimant tossed a tire into the trunk of a car. Similarly, in Wietharn, claimant's knee gave way under the stress of lifting 60 pounds. In contrast, the Gillig case involves a claimant who merely stepped down from his tractor. There was no separate trauma apart from ordinary use of the leg. The injury from the knee giving way was treated as a compensable consequence of the original injury.

The cases involving back injury resulting from altered gait also satisfy this distinction. In those cases the original knee injury produces the trauma to the back, not an independent traumatic event. This distinction appears to be expressly approved in Graber v. Crossroads Cooperative Ass'n, 7 Kan. App. 2d 726, 648 P.2d 265 (1982), *rev. denied* 231 Kan. 800 (1982). In that case the claimant first suffered a compensable injury to his back and then reinjured his back when he slipped. In explaining why the second injury was not a consequence of the first, the court noted that the slip was a trauma-inducing event out of the ordinary pattern of life.

(5) The Board finds the facts of the present case do not involve independent trauma. The Board concludes the injury was not produced by a separate accident but was, instead, the direct and natural result of the primary injury. Respondent argues the facts show a separate accident. First, respondent points out claimant fell when the leg gave way. For the reasons stated above, the Board considers this a direct and natural result of the first injury, not a separate accident as defined above.

Respondent also points out that the truck was higher than the usual truck. This fact, according to respondent, contributed to the second accident. This argument, in our view, presents a close question. Was claimant at some increased risk because of the height of the truck or the position required for exiting the truck that contributed to the injury separate and apart from the prior hip injury? If so, does this satisfy the requirement for independent trauma? While it is a close issue, the Board has concluded, on the basis of claimant's testimony, that the height of the truck was not a factor. Claimant's leg earlier gave way while walking. From her description of the injury in question, she simply placed weight on the leg, she did not jump or fall onto the leg. The Board, therefore, finds the injury was a direct and natural result of the primary injury, the hip injury, and was not caused by a separate accident.

(6) The Board acknowledges that the distinctions drawn above do not fully explain why this case is different from the Wietharn case. If the Wietharn case stands for the proposition that a second injury to another part of the body cannot be a compensable consequence of the primary injury, the conclusion reached here is clearly in conflict with

that decision and is incorrect. However, as explained, the Board notes other instances where the court has treated injury to another part of the body as compensable. The Wietharn decision does not purport to overrule those decisions. The Wietharn case did involve a separate accident as defined here to include some independent trauma. In Wietharn, claimant's knee gave way when he lifted a 60-pound case of vegetables. An injury on the job occurring in this fashion would likely be considered a compensable new accident even if claimant had a noncompensable preexisting knee injury because the conditions of employment, lifting 60 pounds, contributed.

(7) Because claimant's June 17, 1997, injury was a direct and natural result of the June 19, 1996, compensable injury, the injury of June 17, 1997, is likewise a compensable injury.

WHEREFORE, the Appeals Board finds that the Orders by Administrative Law Judge Nelsonna Potts Barnes, dated September 17, 1997, should be, and the same are hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1997.

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BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Robert G. Martin, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director