

APPEAL NO. 990877

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 March 29, 1999. He (hearing officer) determined that the respondent's (claimant) compensable injury of _____, was a producing cause of the claimant's streptococcal infection and left hip injury. The appellant (carrier) appeals these determinations, contending that the evidence was insufficient to meet the claimant's burden of proof. The appeals file contains no response from the claimant. The determination of the hearing officer, based on a stipulation of the parties, that the carrier timely disputed the compensability of the infection and hip injury has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant worked in a warehouse. On _____, a pallet fell on him, striking him on the head and knocking him to the concrete floor. He said he fell and the pallet landed on top of him. Immediately evident was a scalp laceration. The claimant was taken to a doctor and the wound was closed with three sutures. He returned to work that day and continued working for about a week. The sutures were removed on February 26, 1998. About this time, he said, he started experiencing left leg pain. On March 2, 1998, he was admitted to the hospital with severe migratory polyarthritis and the onset of left hip pain. He was eventually diagnosed with a type A streptococcal infection and left sacroiliitis. He was released from the hospital on March 15, 1998. The carrier accepted liability for a head injury. The claimant contends that the streptococcal infection entered his body through the scalp wound and that his hip was injured when the pallet fell on him.

Section 401.011(26) defines injury "as damage and harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." The claimant had the burden of proving that the infection naturally resulted from the head injury; that is, in this case, that the virus entered his body through the scalp laceration. Because this is not a matter within ordinary experience, it had to be proved by expert evidence to a reasonable degree of medical probability. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.).

In a letter of March 5, 1998, Dr. R, the hospital attending physician, wrote that the claimant had no history of a sore throat and that a "definite possible source of entry [for the streptococcal virus] was a blow . . . to the top of his head he received at work [with a resulting scalp laceration I can't say this was the source of entry, but he had no other skin break and this organism requires a source of entry as it will not invade the intact skin."

In a letter of March 19, 1998, Ms. M, R.N., the case manager for the carrier, wrote that she spoke with Dr. R about this case on March 16, 1998, and he "stated he does not know what the source of the infection was." Dr. S completed a peer review for the carrier. In an

undated report, he commented that the streptococcal organism "usually enters the body through a cut in the skin or from direct contact with secretions from infected individuals." He further noted that if the point of entry is through an open wound, the wound site would normally, but not always, show signs of infection. He also said that a scratchy throat reported by the claimant some three days before the onset of symptoms could be the source of the infection even though there was a negative strep screen of the throat. He concluded that, given these possible explanations, he could not determine "exactly the site of entrance of the organism."

The hearing officer considered this evidence and concluded that the source of entry of the streptococcal infection was the open scalp wound. Finding of Fact No. 4. The carrier appeals this determination, contending that the claimant only showed that this was a possibility, but failed to prove to a reasonable degree of medical probability that the infection entered the claimant's body through the scalp wound. In Texas Workers' Compensation Commission Appeal No. 960423, decided April 8, 1996, the claimant scraped his leg on a truck step through his trousers without noticeable bleeding. He had been in prior good health generally with the exception of a prior episode of cellulitis. About a week after the injury, he developed multiple symptoms, including a diagnosis of sepsis and a large open lesion on his leg. The hearing officer relied essentially on the medical opinion of a doctor who said that it was possible that the cut on the skin led to cellulitis and sepsis, which condition naturally resulted from the injury. In affirming this determination, we wrote:

Concerning the sufficiency of expert evidence, in Western Casualty and Surety Company v. Gonzalez, 518 S.W.2d 524, 526-527 (Tex. 1975), the Texas Supreme Court stated the following:

The form of that expert testimony is not so important as its substance. Certainly a doctor is not required to use the usual expression that there is a "reasonable probability" of causal connection between the original injury and the present physical condition. [Citations omitted.] The doctor may state his opinion more positively: he may simply state that the original injury did cause the present physical condition. It is when he is uncertain, or does no more than acknowledge that everything is possible, that a gap in the proof may be closed only by the doctor deciding that the chances weigh more heavily in favor of the casual relation.

This Court has never required that the medical expert explain or even understand the precise biochemistry or mechanism by which the initial trauma affects the health or organs of the injured party If every episode in the chain of degeneration within the body of a person had to be established in medical probability, the available expert witnesses, of either rare

expertise or dishonesty, would be so few that injured persons would seldom make that proof.

We also observed that, in addition to this medical evidence, the hearing officer could consider evidence of prior good health, an explanation of a prior history of cellulitis as unrelated to the current condition, and the temporal relationship between the injury and the other symptoms.

In Texas Workers' Compensation Commission Appeal No. 962210, decided December 18, 1996 (Unpublished), we also affirmed a finding that the claimant's puncture wound was the site of an infection of so-called "flesh eating virus." In that case, a blister and swelling formed at the site and the claimant developed a high fever and flu-like symptoms which led to a diagnosis of systemic infection. A treating doctor was of the opinion that the "probable site of infection may have been the puncture wound" and that this was the only history of trauma given. This evidence, together with the claimant's history of the course of the infection and the proximity in time between the puncture injury and the infection, was considered sufficient to support a finding that the claimant's necrotising faciitis was the result of the puncture wound.

In the case we now consider, Dr. S wrote in terms of the head laceration as being a "definite possible" source of entry of the virus. The opinion was provided against a background of general good health (except for a "scratchy throat" and "alcohol gastritis" whose relevance to streptococcal virus was left undeveloped) and no other evidence of any other skin lacerations or personal contacts of the claimant around the time of the accident. Except for the fact that in Appeal No. 960423, *supra*, and Appeal No. 962210, *supra*, there was evidence of infection at the site of the wound, a circumstance not present in this case, but one explained by Dr. S, these cases are remarkably similar to the one we now consider.

We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the evidence in this case and in light of existing precedent, we find the evidence sufficient to support the determination of the hearing officer that the claimant proved to a reasonable degree of medical probability that his streptococcal infection was a natural result of the head laceration. For this reason, we affirm that determination.

The hearing officer found that the hip injury was the result of the claimant's accident on _____, either by reason of direct trauma or by reason of the "inflammation of the left hip" from the infection. Finding of Fact 7. The infection theory of causation required proof by expert medical evidence. An MRI on June 8, 1998, suggested infection or inflammatory arthritis as the cause of the abnormal left sacroiliac joint and that the findings were "considered atypical for trauma." An MRI on August 18, 1998, suggested infection, inflammatory arthritis or post-trauma. Dr. P, the treating doctor, wrote on February 22, 1999, that left sacroiliac disease "more than likely was related to the blow on the head and the subsequent fall" On August 18, 1998, Dr. M, a referral doctor, wrote that this was

"a post-traumatic injury." The carrier argues on appeal that, for the reasons stated above, any infection was not caused by the laceration and that any infection-caused sacroiliitis was not compensable. It also argues that trauma did not cause this injury because the claimant did not complain of hip pain after his return to work, but only shortly before he was admitted to the hospital on March 2, 1998. Dr. M responds to this argument in a January 17, 1999, letter with the comment that "[p]ossibly the inflammatory response had not set in until later or [claimant] possibly has a high tolerance." Under our standard of review, we find the evidence sufficient to support the finding that the hip injury was compensable on either an infection or trauma theory of causation.

Finally, the carrier appeals the findings of disability from February 27 through July 17, 1998, the date, according to the claimant, when he returned to work and considered his injuries resolved, on the basis that the only compensable injury was the head laceration which did not cause the claimant to lose time at work. Because we have affirmed the finding that the infection and left hip were part of the compensable injury in this case, we also affirm the finding of disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge