

APPEAL NO. 022973
FILED DECEMBER 23, 2002

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 November 6, 2002. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury in the form of an occupational disease with a date of injury of _____, and that the claimant did not have disability.

The claimant appealed, contending that the evidence was sufficient to establish that he sustained a staph infection because the employer/owner/coworker had an open infection and maintained an unclean facility causing his staph infection. The claimant also asserts that one of his exhibits should have been admitted and considered. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant, a physical therapist, testified that his left hand began to itch, turn red, and began to swell on _____. The claimant began seeking medical treatment on September 18, 2001. The claimant subsequently developed other lesions on his body. Initially the treating doctor noted that the claimant's condition was "[p]robably staphylococcal. It could be related to use of the whirlpool" and that a "[p]ossibility is that he had a recluse spider bite." Another doctor in a report dated _____, noted that the claimant "apparently got bitten by a brown recluse spider on September 14th." It was not until April 26, 2002, that another doctor commented that "[b]ased on history and physical findings it would seem apparent this was a work related illness." In dispute is whether the employer's premises were unclean and whether another worker had a staph infection and how that staph infection might have been spread.

The Appeals Panel has held that necessary proof of causation be established to a reasonable medical probability by expert evidence in cases where the subject matter is so complex that a fact finder lacks the ability from common knowledge to find a causal connection. Texas Workers' Compensation Commission Appeal No. 020118, decided March 4, 2002. *See also Schaefer v. Texas Employers' Insurance Association*, 612 S.W.2d 199 (Tex. 1980). Such evidence is lacking in this case, as found by the hearing officer.

The claimant offered as an exhibit, a policy and procedure manual and documentary evidence regarding staph infections. Although the hearing officer's decision under Evidence Presented would indicate the exhibit was admitted as the claimant's Exhibit No. 8, the record and the face of the exhibit clearly indicated that the exhibit was excluded on objection by the carrier as not having been timely exchanged.

To obtain the reversal of a decision based on the hearing officer's abuse of discretion in an evidentiary ruling, an appellant must show that the admission or exclusion of evidence was in fact an abuse of discretion, and also that such error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). Applying that standard, we find no abuse of discretion by the hearing officer in excluding the offered exhibit as not being timely exchanged pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)).

Because we are affirming the hearing officer's decision that the claimant had not sustained a compensable injury, the claimant cannot, by definition in Section 401.011(16) have disability.

After review of the record before us and the complained-of determination, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **HIGHLANDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JAMES W. HOOKER
10370 RICHMOND AVENUE
HOUSTON, TEXAS 77042.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Panel
Manager/Judge

Edward Vilano
Appeals Judge