

APPEAL NO. 081781  
FILED JANUARY 21, 2009

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing (CCH) was held on October 31, 2008, in (City), Texas, with (hearing officer) presiding as hearing officer and issuing a separate decision for each docket number.

With regard to Docket No. 1, the hearing officer decided that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_, and had disability resulting from that compensable injury beginning on January 3, 2008, and continuing through the date of the CCH. The appellant (carrier) appealed, disputing the compensable injury and disability determinations made by the hearing officer. The carrier also contends that the hearing officer's finding that the injury to the claimant's right ankle on \_\_\_\_\_, accelerated a pre-existing staph infection in his right ankle is wholly without supporting evidence and that not one medical opinion causally links the claimant's infection to an event occurring on \_\_\_\_\_. The claimant responded, urging affirmance.

With regard to Docket No. 2, styled [Claimant] v. Wausau Underwriters Insurance Company, the hearing officer decided that the compensable injury of \_\_\_\_\_, includes an injury to the right ankle after the intervening injury which occurred on \_\_\_\_\_. Texas Department of Insurance, Division of Workers' Compensation (Division) records indicate that no appeal was filed in Docket No. 2.

DECISION

Affirmed in part and reversed and remanded in part.

It is undisputed that the claimant worked for a construction company and sustained an injury to his right ankle on \_\_\_\_\_, when a telephone pole fell on his right leg and fractured his right ankle. In 1993, the claimant's right ankle was surgically repaired by screwing in a stabilizing plate. The claimant testified that on \_\_\_\_\_, he was climbing a ladder while performing his job duties when he slipped on a rung of the ladder, hitting his right ankle, and then twisting his right ankle as he landed on the ground. It was undisputed that the claimant did not have an open wound and there was no bleeding as a result of the fall from the ladder. The claimant sought medical treatment and underwent a surgical procedure on January 3, 2008, described as irrigation, debridement, and removal of infected hardware of the right ankle.

The hearing officer noted in the Background Information portion of his decision that "[w]hile the full extent of the injury is somewhat muddied, the sudden onset of pain, swelling and redness is consistent with [the] [c]laimant's testimony and is indicative of damage to [the] [c]laimant's right ankle when his foot slipped off the rung of the ladder." Further, the hearing officer states that the injury sustained when the claimant slipped off

the ladder “appears, in a reasonable likelihood, to have accelerated the disease process of the infection although there is no evidence that the infection actually arose from the incident on \_\_\_\_\_.” We note that no extent-of-injury issue was presented to the hearing officer for resolution and that the determination made by the hearing officer of a compensable injury did not specifically limit the nature of the injury. However, in order to resolve the disability issue, the hearing officer had to identify the nature of the injury in order to resolve the issue presented to him. See Appeals Panel Decision (APD) 041415, decided July 26, 2004.

Although he found that the \_\_\_\_\_, work-related incident accelerated a pre-existing staph infection in the claimant’s right ankle, the hearing officer states in the Background Information portion of his decision that there was no evidence that the infection arose from the incident on \_\_\_\_\_. The evidence reflects that the claimant had surgery to remove infected hardware the day after the \_\_\_\_\_, incident occurred. There is no medical evidence which suggests that the slip incident on the ladder accelerated any infection and as previously noted the slip incident did not result in an open wound or scratch. 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. APD 022301, decided October 23, 2002. See *also Schaefer v. Texas Employers’ Insurance Association*, 612 S.W.2d 199 (Tex. 1980).

That portion of the hearing officer’s finding that the \_\_\_\_\_, work-related incident accelerated a pre-existing staph infection in his right ankle is against the great weight and preponderance of the evidence. The evidence supports that portion of the hearing officer’s finding that the claimant sustained an injury to his right ankle on \_\_\_\_\_, when his foot slipped off a rung of the ladder he used in the course and scope of employment, twisting his right ankle. The hearing officer’s determination that the claimant sustained a compensable injury is supported by sufficient evidence and is affirmed.

Since the hearing officer’s disability determination is predicated in part on his finding that the \_\_\_\_\_, compensable injury accelerated a pre-existing staph infection in the claimant’s right ankle, we reverse the hearing officer’s determination that the claimant had disability beginning on January 3, 2008, and continuing through the date of the CCH. We remand the case to the hearing officer for a determination of disability as defined by Section 401.011(16) due to a compensable injury consistent with the evidence in this case.

## **SUMMARY**

We affirm the hearing officer’s determination that the claimant sustained a compensable injury. We reverse the hearing officer’s determination that the claimant had disability beginning on January 3, 2008, and continuing through the date of the

CCH and remand this case to the hearing officer to make a disability determination consistent with the evidence in this case.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

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

**CORPORATION SERVICE COMPANY  
D/B/A/ CSC – LAWYERS INCORPORATING SERVICE COMPANY  
701 BRAZOS STREET #1050  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge