

APPEAL NO. 090633  
FILED JULY 1, 2009

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 30, 2009. With regard to the two issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_, and that the claimed injury included the diagnosis of Methicillin Resistant *Staphylococcus Aureus* (MRSA).

The appellant (carrier) appeals, contending that there was no expert evidence to a reasonable degree of medical probability to support the hearing officer's decision. The appeal file does not contain a response from the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

**BACKGROUND INFORMATION**

The claimant was a leadman on a construction project. The claimant testified that on the morning of \_\_\_\_\_, he was cleaning an anchor bolt with a steel wire brush when one of the wire bristles went through his work glove sticking his right index finger. The claimant said he took off his glove, picked a metal bristle out of his finger, did not see any blood or redness and returned to his work. The claimant testified that by the end of his shift his finger had begun to feel stiff and swell. The hearing officer, in his Background Information, comments that the next morning the condition of the claimant's right index finger was beginning to spread to the rest of his hand. The claimant went to a local hospital emergency room (ER) where the doctor believed the claimant had been bitten by a spider or insect. The ER record notes a "point of entry visible on [the right index] finger." The claimant concedes that he did not tell the doctor or ER personnel of the bristle puncture. The hearing officer further noted, in his Background Information, that:

The medical records in evidence are inconsistent with the Claimant's testimonial timeline, and even inconsistent within themselves. Suffice it to say that the Claimant went to the ER room twice, and was then referred to a wound care facility . . . . [However], [t]he Claimant opted to return home to (City) Texas and go to the hospital there.

When he returned home . . . on May 29, 2009 the Claimant was admitted to the hospital the same day and had surgery on his finger on May 30 to debride the abscess. Cultures taken at the time of the surgery determined that the infection in the wound was due to MRSA.

A microbiology report of a specimen collected on May 30, 2008, notes “many MRSA present, previous history of MRSA.” The claimant testified that he had no prior history of MRSA infection. The May 30, 2008, microbiology report is the only record to mention MRSA, although another microbiology report notes “Staphylococcus aureus.”

The hearing officer, in the Background Information, further comments:

The Carrier cast this as an occupational disease case, which would require expert testimony to relate the MRSA to the Claimant’s workplace. However, this is actually a wound infection case, with no real dispute as to the wound having occurred on the job, and with the effects of the infection having begun to manifest prior to the Claimant leaving the worksite.

We note, however, the extent-of-injury issue before the hearing officer was not whether the claimed injury included a non-specific infection, but rather, did it include a diagnosis of MRSA.

### **COMPENSABLE INJURY**

The hearing officer’s determination that the claimant sustained a compensable injury on \_\_\_\_\_, is supported by the evidence and is affirmed.

### **EXTENT OF INJURY TO INCLUDE MRSA**

The claimant had the burden of proof to establish that the compensable injury included a diagnosis of MRSA. The Appeals Panel has previously held that proof of causation be established to a reasonable medical probability by expert evidence where the subject is so complex that a fact finder lacks the ability from common knowledge to find a causal connection. Appeals Panel Decision (APD) 022301, decided October 23, 2002. See also Schaefer v. Texas Employers’ Insurance Association, 612 S.W.2d 199 (Tex. 1980). Both APD 022301 and APD 011598, decided August 14, 2001, required expert evidence to establish MRSA.

In the instant case, there was no expert medical evidence presented to establish that the claimant was infected with MRSA at the work place or due to the sticking/bite incident. Since no expert medical evidence based on reasonable medical probability establishes if, or how, the claimant contracted MRSA as a result of the compensable injury on \_\_\_\_\_, we hold the hearing officer’s determination that the claimed injury included a diagnosis of MRSA to be so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We reverse the hearing officer’s determination that the claimed injury included a diagnosis of MRSA and we render a new decision that the claimed injury does not include the diagnosis of MRSA.

## SUMMARY

We affirm the hearing officer's determination that the claimant sustained a compensable injury on \_\_\_\_\_. We reverse the hearing officer's determination that the claimed injury included the diagnosis of MRSA and we render a new decision that the claimed injury does not include the diagnosis of MRSA.

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

**RUSSELL RAY OLIVER, PRESIDENT  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge