

APPEAL NO. 171882  
FILED OCTOBER 3, 2017

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 June 28, 2017, in (city), Texas, with (administrative law judge (ALJ)) presiding as the (ALJ).<sup>1</sup> The ALJ resolved the disputed issues by deciding that: (1) the date of injury is July 1, 2016; (2) the respondent (claimant) did not sustain a compensable injury on (date of injury); and (3) the claimant sustained a compensable injury in the form of an occupational disease on July 1, 2016.

The appellant (self-insured) appealed all of the ALJ's determinations. The self-insured contends that the evidence does not support the ALJ's determinations and that the claimant has failed to prove by a reasonable medical probability how he contracted Lyme disease. The claimant responded, urging affirmance of the ALJ's determinations.

**DECISION**

Affirmed in part and reversed and rendered in part.

The claimant testified he is a Texas State Trooper and in early July 2015 he was assigned to patrol near the United States/Mexico border to assist Border Patrol Agents with Operation Strong Safety. The claimant testified he was bitten by a tick and has been diagnosed with Lyme disease.

**DATE OF INJURY**

The ALJ's determination that the date of injury is July 1, 2016, is supported by sufficient evidence and is affirmed.

**(DATE OF INJURY) INJURY**

The ALJ's determination that the claimant did not sustain a compensable injury on (date of injury), is supported by sufficient evidence and is affirmed.

**JULY 1, 2016 INJURY**

The self-insured asserts that the claimant did not meet his burden to prove causation of Lyme disease, citing Appeals Panel Decision (APD) 060798, decided June

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<sup>1</sup> Section 410.152 was amended in House Bill 2111 of the 85th Leg., R.S. (2017), effective September 1, 2017, changing the title of hearing officer to ALJ.

19, 2006, and APD 93885, decided November 15, 1993. In APD 060798 the claimant, an animal services officer whose duties were to investigate animal/human interactions and work at a shelter caring for animals, was diagnosed with Rocky Mountain Spotted Fever (RMSF). The Appeals Panel reversed the ALJ's determination that the claimant sustained a compensable injury in the form of the occupational disease of RMSF. The Appeals Panel noted that the claimant's evidence indicated that RMSF is transmitted by several different species of ticks, and that the type of ticks in which the claimant came into contact was not established or tested and there was no evidence that the ticks in that area carried the bacteria that causes RMSF. That case, and the self-insured in the instant case, also cite APD 93885. In APD 93885, an air conditioning/refrigeration maintenance worker alleged he contracted Lyme disease as a result of being bitten by ticks at work while working on an air conditioning unit on a hospital roof. There was testimony that the claimant had to pull ticks off of himself following work. There was testimony and reports in evidence regarding Lyme disease and the various types of ticks which transmit the disease. The Appeals Panel commented:

The medical evidence demonstrates that not all ticks carry the bacteria that causes Lyme disease and that the bacteria has been detected in fleas, mosquitoes, and biting flies. The claimant admitted that ticks from the hospital roof were not tested and there is no evidence that [(Dr. SG)] tested ticks from the hospital roof to determine if they in fact carried the bacteria that causes Lyme disease. There is also no evidence of the type of tick specie[s] that was on the hospital roof. In essence, Dr. SG assumes that the claimant contracted Lyme disease at work based on the fact that he was bitten by ticks at work on numerous occasions. However, she admits that in Texas there is a low frequency of ticks carrying Lyme bacteria and "assumed" that in the location where the claimant lived and worked the frequency of ticks carrying Lyme disease is about one percent. The claimant acknowledged that he had pulled ticks off of himself from occurrences other than work. The absence of evidence in this case that the ticks at the claimant's work carried the bacteria that causes Lyme disease is directly analogous to the (*Schaefer v. Texas Employers' Insurance Association*, 612 S.W.2d 199 (Tex. 1980)) case where there was an absence of evidence that the bacteria was present in the soil where Schaefer worked. Thus, we conclude, as did the court in Schaefer under similar circumstances, that Dr. SG's opinion, although couched in terms of probability, did no more than suggest a possibility as to how or when the claimant was exposed to or contracted Lyme disease.

The evidence in the instant case established the claimant was diagnosed with Lyme disease on July 1, 2016. In evidence is a medical narrative dated April 11, 2017,

from (Dr. E). Dr. E opined that the tick bites sustained on (date of injury), brought forth the bacteria *Borrelia burgdorferi* that caused Lyme disease because the claimant's symptoms after the tick bites improved while on treatment for Lyme disease. Dr. E pointed out that the claimant denied previous exposure or tick bites, which further supported her opinion that the tick bites on (date of injury), were the cause of the Lyme disease. Dr. E stated that the mechanism of injury of tick bites is consistent with the bacteria *Borrelia burgdorferi* that causes Lyme disease. Dr. E further stated that being bitten by infected ticks is the only way a human is infected, and that Lyme disease is not detectable until four or more months after the injurious exposure and symptoms can take weeks, months, or even longer to appear.

However, as in APD 93885, *supra*, there was no evidence to establish the type of tick to which the claimant was exposed or that the tick or ticks carried the bacteria that causes Lyme disease. Dr. E assumed that because the claimant was bitten by ticks those ticks transmitted Lyme disease. Her opinion merely suggests a bare possibility of how the claimant was exposed to Lyme disease. Accordingly, we reverse the ALJ's determination that the claimant sustained a compensable injury in the form of an occupational disease on July 1, 2016, and we render a new decision that the claimant did not sustain a compensable injury in the form of an occupational disease on July 1, 2016.

### **SUMMARY**

We affirm the ALJ's determination that the date of injury is July 1, 2016.

We affirm the ALJ's determination that the claimant did not sustain a compensable injury on (date of injury).

We reverse the ALJ's determination that the claimant sustained a compensable injury in the form of an occupational disease on July 1, 2016, and we render a new decision that the claimant did not sustain a compensable injury in the form of an occupational disease on July 1, 2016.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
300 WEST 15TH STREET  
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR  
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Margaret L. Turner  
Appeals Judge