

## APPEAL NO. 980102

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 16, 1997. With respect to the only issue before him, the hearing officer determined that claimant had sustained a compensable injury as a result of an insect sting.

Carrier appeals contending that the evidence is insufficient to prove an insect sting in that claimant did not see an insect and neither claimant nor his supervisor saw any evidence of a bite mark or abrasion. Carrier also contends that claimant was at no greater risk to an insect sting than the general public and urges that we reverse the hearing officer's decision and render a decision in its favor. The file does not contain a response from the claimant.

### DECISION

Affirmed.

Claimant was employed as a (employer) bus driver. On \_\_\_\_\_ (all dates are 1997), claimant was assigned a route driving to (city 1). Claimant testified that while on that route he felt a sting on his lower right leg and "swiped" at it. Claimant said that he continued driving and that when he got to city 1 his leg was swollen and aching. Claimant laid over in city 1, reported the sting and eventually returned to (city 2) the following day, where he showed his swollen leg to his supervisor, who sent claimant to a hospital emergency room (ER). Claimant subsequently saw his family doctor, (Dr. K) on August 4th. Claimant testified that he did not see the insect that stung him. Claimant missed several weeks work but has returned to full duty. Claimant was diagnosed as a diabetic (controlled by medication) about a year before the CCH.

The hospital ER records of (following day of alleged injury) give a history of an insect bite while driving with pain and swelling in the lower right leg. The diagnosis was cellulitis which the ER discharge document defines as:

Cellulitis is a particular type of skin infection. It results from the growth of small germs underneath the skin. Cellulitis sometime develops around cuts, burns or scrapes, but often it develops for no apparent reason in normal, uninjured skin. Any area of skin can develop cellulitis. The infected area is usually red, warm, swollen and tender. In addition, cellulitis sometime produces a fever of 101 degrees of [sic] more.

Claimant was prescribed medication and was referred to his "private doctor." Dr. K in an Initial Medical Report (TWCC-61) of August 4th, notes a history of an insect bite and

prescribes a treatment plan for cellulitis. Several subsequent Specific and Subsequent Medical Reports (TWCC-64) reflect treatment for cellulitis. In a brief report dated October 17th, Dr. K states that claimant had "cellulitis secondary to Insect Bite." In a follow up report dated November 7th, Dr. K explains that claimant had right leg swelling "caused by an insect bite . . . . Diagnosis was cellulitis."

Claimant's supervisor in a recorded statement said that she did not see a bite mark or abrasion although she said claimant's "leg was swelled up from just below the ankle area all the way up to his knee." Carrier's position is that claimant failed to prove a causal connection between his injury and his employment citing Texas Workers' Compensation Commission Appeal No. 93885, decided November 15, 1993 (a case involving causation of Lyme disease), see *also* Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.), and Texas Workers' Compensation Commission Appeal No. 951583, decided November 9, 1995, which involved a bee sting. (We note that both parties cited Appeal No. 951583 and that the same Appeals Judge authored both Appeal No. 93885, *supra*, and Appeal No. 951583, *supra*.) Appeal No. 951583 involved a mechanic who was stung in the mouth by a bee which had landed on a can of soda that the mechanic was drinking. In reversing the hearing officer's finding the bee sting not compensable, the Appeals Panel cited Travelers Insurance Company v. Williams, 378 S.W.2d 110 (Tex. Civ. App.-Amarillo 1964, writ ref'd n.r.e.), in which the court held that a wasp sting is not an act of God within the workers' compensation statute. Appeal No. 951583 cited and discussed Indemnity Ins. Co. of North America v. Garsee, 54 S.W.2d 817 (Tex. Civ. App.-Beaumont 1932, no writ), which was also cited in Aetna Insurance Company v. Hart, 315 S.W.2d 169, 174 (Tex. Civ. App.-Houston 1958, writ ref'd n.r.e.). Garsee, *supra*, was quoted as authority that a wasp sting was compensable, stating:

An employee may be stung by a wasp in the performance of his work; he might have been stung elsewhere, but if in the performance of his duties he receives the injury he is to be compensated. [Citing Garsee, *supra*.]

Another insect case cited in Appeal No. 951583 was Standard Fire Insurance Company v. Cuellar, 468 S.W.2d 880 (Tex. Civ. App.-San Antonio 1971, writ ref'd n.r.e.), where the court held that the injured worker had to prove not only that he was injured while engaged in or about the furtherance of the employer's business but that he must also show that his injury was of such a kind and character as had to do with and originated in the employer's work, trade, business or profession. The court then stated that the evidence established that the insect bite sustained by the employee resulted from the effort on his part to discharge in an orderly way the duties of his employment, that he was stung while in the performance of his duties of employment, and that he was subjected to this risk by carrying out his designated duties. The court held that it was clear that the insect sting was a risk or hazard of the employee's employment and was compensable.

In this case it is undisputed that claimant was in the course and scope of his employment when the injury occurred. The determination of whether claimant sustained an insect bite or whether the cellulitis developed for no apparent reason is within the purview of the hearing officer, as the finder of fact. The hospital ER records note a history of an insect bite and Dr. K affirmatively states, on two occasions, that the cellulitis was secondary to an insect bite. There was no medical evidence to the contrary. The hearing officer in his Statement of the Evidence and Findings of Fact determined that it was a summer day and that opening and closing the bus door exposed claimant to a greater risk of harm than the general public. We are unwilling to say, as a matter of law, that that factual determination is incorrect or so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. We would also note that in some fairly recent Appeals Panel decisions involving insect bites we have affirmed the hearing officer's decisions. See Texas Workers' Compensation Commission Appeal No. 971608, decided September 30, 1997 Texas Workers' Compensation Commission Appeal No. 971238, decided August 13, 1997; and Texas Workers' Compensation Commission Appeal No. 970007, decided February 18, 1997.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and consequently, the decision and order of the hearing officer are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge