APPEAL NO. 001287

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 May 19, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable left ankle injury with resulting infection on _____; and that the claimant had disability beginning on November 11, 1999, and continuing through the date of the CCH. The appellant (carrier) appealed, contending that this determination is against the great weight of the evidence. The appeals file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant worked in a fruit and vegetable warehouse in the (valley). She testified that on _____, she was struck on the left ankle by a pallet on a forklift. She said she experienced pain, abrasions, and broken skin, but no bleeding. Later that night her ankle began to swell and, at some point, pus began to form at the site. She initially sought medical care in (city 1), in May 1999 and continued working until November 12, 1999, with her ankle wrapped. The claimant also testified that her nephew, with whom she worked but with whom she denied any contact in a social setting, also experienced the same infection a number of months before the claimant.

On November 11, 1999, the claimant saw Dr. Y in (city 2), Texas. He described a "large ulcer which measures 7 x 8 cm at least, purulent discharge, it's quite large." Laboratory analysis determined that the bacteria causing the infection was Pseudomonas Aeruginosa (PA). Evidence submitted by the claimant from an Internet search described PA as "an aerobic, motile, gram-negative rod able to grow and survive in almost any environment, lives primarily in water, soil, and vegetation. . . . The pathogen is viewed as opportunistic." Dr. Y, in a report of December 14, 1999, described the injury as an "abrasion" and commented that he did not find the infection in the nephew to be a coincidence. Rather, he said, "[u]nfortunately, there is some type of contamination of the pallet. It could be due to the work environment, humidity, or the nature of their job." The claimant testified that Dr. Y told her that the fertilizer at work hosted the bacteria.

Dr. T reviewed the claimant's records at the request of the carrier. He concluded that the claimant and her nephew probably "shared a common source of infection." He also believed that infection "usually accompanies concomitant systemic infection." He found none of the normal risk factors present in the claimant and thought entry through an abrasion was an "unlikely" way of acquiring the infection. He also attached a medical reference to his report. This document stated that PA "is found in soil, in water, and on plants. . . . In the nonhospital setting, infections have been related to growth in swimming pools, contact lens solutions, and hot tubs."

Section 401.011(26) defines injury as “damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." The carrier conceded an ankle abrasion injury occurred in the course and scope of employment. The claimant had the burden of proving that her infection naturally resulted from this ankle abrasion. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether it did was a question of fact which had to be proved by expert evidence to a reasonable degree of medical probability. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). Both parties tried this case on the theory that the PA had to be present in the workplace in order for the infection to be found compensable. The hearing officer, responding to the parties, resolved the issue on this basis by finding essentially that the PA was present in the workplace when it came in direct contact with the abrasion by virtue of some instrumentality in the warehouse, i.e., contaminated vegetables or equipment.[1] In his discussion and rationale for this finding, he noted that the initial injury was a "scrape or abrasion," which "did not openly bleed." He also commented that the PA "had entered the ankle wound”; that PA grows well in a moist setting in soil, water, feces (including fertilizer), sewage, and on vegetation; that the infections of both the claimant and her nephew "left the warehouse as the only location that they shared in common over the period of four months." He concluded that "[w]hether the bacterium entered her ankle wound from the leg of the stand or from some other source there, the causal connection was satisfactorily made to her employment." This reference to the stand derives from the claimant's testimony that she helped set up a conveyance used to roll the produce from the trucks down to the warehouse floor. There was no testimony that this stand rubbed against her ankle abrasion.

In its appeal, the carrier asserts that the claimant failed to meet her burden of proof. It stresses that the nature of the initial injury was an abrasion, not a substantial break in the skin; there was no testing of the workplace for the presence of PA; that the fact that the nephew had the same infection is largely non-probative of anything; and "perhaps the biggest assumption made by the Hearing Officer is that any fertilizer which may have been used on the fruit was fecal based, versus chemical based." In Schaefer, *supra*, the court held that an extremely rare disease, mycobacteriosis intracellular, is an "ordinary disease of life" absent a causal connection between the employee's affliction and employment. The court stated that, as used in the statute, "ordinary diseases" encompass all diseases, except occupational diseases, which, in turn, are determined by their relationship to employment. The court also emphasized that the claimant contracted a rare strain of tuberculosis and the lack of evidence that this strain was present in the soil in which he worked was fatal to his case. In Texas Workers' Compensation Commission Appeal No. 93885, decided November 15, 1993, the issue was whether the claimant contracted Lyme disease as a result of increased exposure to ticks in the workplace. The claimant lived in

[1]The hearing officer found that the claimant's infection "arose out of and was sustained in the course and scope of her employment." Finding of Fact No. 5.

a rural area with some exposure to ticks and there was other evidence that Lyme disease carrying ticks were not prevalent in Texas. The hearing officer found the claimant's Lyme disease was caused by a greater exposure to ticks in the workplace than in the general environment. The Appeals Panel reversed and rendered a decision against the claimant because the claimant produced no direct evidence of Lyme disease from exposure to "ticks at work."

These cases dealt with situations where the initial injury, in the nature of a disease, was claimed to have been contracted by contact with an agent in the work environment. Much different is the case we now consider. Here, the initial and undisputed injury was an abrasion. The proper analysis was whether the infection naturally resulted from this abrasion and it mattered little, if at all, whether the contact between the PA and the wound was made on the job or anywhere else. *See* Texas Workers' Compensation Commission Appeal No. 94067, decided February 28, 1994, and cases cited therein for a discussion of "naturally resulting." There was no dispute that the site of the abrasion was where the infection occurred. The expert evidence, limited as it was, was critical to establishing the nature of the bacteria and how this type of infection occurs. What is clear from this evidence is that PA infection is rare and that the claimant had none of the normal predisposing conditions typical in cases of infection by this opportunistic bacteria. Nonetheless, we conclude that the evidence of the infection at the site of the abrasion was sufficient to support the finding that the infection was compensable under the theory that the infection naturally resulted from the compensable abrasion injury. *See* Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991, for the proposition that we will affirm a decision of a hearing officer on any theory reasonably supported by the evidence.

The carrier also appeals the disability determination, contending that the medical evidence, at most, supports disability only from March 7, 2000. We conclude that the testimony of the claimant as well as evidence about the nature and extent of this infection were sufficient to support the finding of disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Robert W. Potts
Appeals Judge