

APPEAL NO. 051243  
FILED JUNE 24, 2005

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 April 26, 2005. The hearing officer resolved the disputed issues by deciding that: (1) the respondent (claimant) sustained a compensable injury on \_\_\_\_\_; (2) that the compensable injury includes necrotizing fasciitis, cellulitis, and/or vasculitis; (3) that the appellant (carrier) did not waive the right to contest compensability of the claim; and (4) that the claimant has disability resulting from the compensable injury beginning on February 17 through May 28, 2003. The carrier appealed, disputing the compensable injury, extent-of-injury, and disability determinations. The claimant responded, urging affirmance of the issues appealed by the carrier. The hearing officer's determination that the carrier did not waive the right to contest compensability of the claimant was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part

The claimant testified that on \_\_\_\_\_, he slipped on a wet floor shortly after arriving at his worksite. Although he testified that he did not fall to the ground, he felt pain in his left calf area but continued to work. The claimant testified that by the Monday following the incident, he was unable to work, and subsequently sought medical treatment. Although there was conflicting evidence regarding whether the claimant had slipped while walking to work or whether he slipped after he arrived and began working, there is sufficient evidence to support the hearing officer's determination that the claimant sustained a compensable injury.

A medical record dated February 20, 2003, reflects that the claimant was diagnosed with vasculitis. Various medical records in evidence reflect that the claimant developed cellulitis and had two surgeries due to necrotizing fasciitis of his left calf. The carrier argues that the claimant failed to present evidence of any puncture or abrasion that would allow the admission of necrotizing fasciitis or the paths by which the flesh eating bacteria could infect the body. The carrier additionally argues that the claimant failed to establish that the medical opinions given were made by experts in the subject matter at issue. In a medical report dated May 27, 2003, (Dr. G) after examining the claimant in a follow up evaluation, stated it is his opinion that the claimant's problem originated with a traumatic event, which was work related and which eventuated in a bacterial infection which led to the necrotizing fasciitis. (Dr. W) in a peer review dated March 8, 2005, noted that the slip and fall was poorly documented and that evidence of breakage of the skin was not recorded. Dr. W went on to state it is possible that the claimant actually fell, ruptured a vessel, and developed a compartment syndrome that subsequently got infected and then opined "in either case, it would appear that the [claimant's] presenting problems were related to the fall..."

In the applicable finding of fact, conclusion of law, and the decision itself, the hearing officer determined that the compensable injury includes necrotizing fasciitis, cellulitis, and/or vasculitis. Because the hearing officer included the “and/or” language in her findings, conclusions, and decision, it is unclear if the determination of extent of injury favorable to the claimant included all of the alleged conditions, two of the alleged conditions, or only one of the alleged conditions. See Texas Workers’ Compensation Commission Appeal No. 050239, decided March 17, 2005. Accordingly, we remand the extent-of-injury determination back to the hearing officer to determine whether the claimant’s compensable injury of \_\_\_\_\_, includes necrotizing fasciitis, cellulitis, and vasculitis or any singular condition or combination thereof. No additional hearing needs to be held.

The hearing officer found that the claimant suffered disability beginning February 17 and continuing through May 28, 2003. However, since the extent-of-injury issue has been remanded, we also reverse the determination that the claimant had disability beginning on February 17 and continuing through May 28, 2003. To review whether or not the evidence presented is sufficient to support the determination of disability in this case, it is necessary to ascertain the extent of the injury determined.

We affirm the hearing officer’s determination that the claimant sustained a compensable injury on \_\_\_\_\_; we reverse the determinations that the compensable injury includes necrotizing fasciitis, cellulitis, and/or fasciitis and that the claimant had disability beginning on February 17 and continuing through May 28, 2003, and remand the extent-of-injury and disability issues back to the hearing officer for further action consistent with this decision.

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 Texas Workers’ Compensation Commission’s Division of Hearings 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.

The true corporate name of the insurance carrier is **DISCOVERY PROPERTY & CASUALTY INSURANCE COMPANY (ST. PAUL)** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
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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Robert W. Potts  
Appeals Judge