

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F503061

TRAVIS M. GREEN

CLAIMANT

**CITY OF LITTLE ROCK
(SELF-INSURED)**

RESPONDENT EMPLOYER

ORDER AND OPINION FILED AUGUST 24, 2005

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE AARON L. MARTIN, Attorney at Law,
Fayetteville, Arkansas.

Respondent represented by the HONORABLE BETTY J. DEMORY, Attorney at Law,
Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on July 28, 2005. A prehearing conference was held on May 24, 2005, and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on February 4, 2005.

The claimant contends he sustained a compensable specific incident injury on February 4, 2005 and is entitled to medical benefits. All other issues are reserved.

Respondents contend the claimant did not sustain a compensable injury arising out of and in the course and scope of his employment. Respondents contend that while the claimant is contending he sustained a spider bite to his left knee, respondents believe it is speculation that the claimant was spider bitten and even if he was spider

bitten, the claimant's employment did not put him at a greater risk than the general public and, therefore, is not a compensable injury. The initial visit to Baptist emergency room was paid by respondents, as well as two visits to Southwest Medical Group. The claim was controverted as of February 9, 2005.

ISSUES TO BE LITIGATED

1. Compensability.
2. Medical benefits.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There was an employer-employee relationship on February 4, 2005.
2. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his knee arising out of and in the course of his employment.
3. Respondents are responsible for medical the claimant has incurred for treating his knee injury.

DISCUSSION

The claimant, 28 years old, was working as a fireman on February 4, 2005, at the Central Station. About 4:00 p.m., the claimant noticed pain in his knee when he was walking. The knee had a red spot with a big red dot in the center and was tender and swollen. The claimant participated in five calls that day that were alarms and medical but no actual fires. For each fire alarm, the claimant dresses in his full uniform. The claimant also worked on February 3, 2005, where he responded to three alarms, one was a small fire requiring him to kneel on the ground and pry some boards off a wall to extinguish the fire.

According to the claimant, his turnout is stored in the engine bay area of Station 7 where the coat and helmet are on a hook and the boots and pants are on the floor. The garage door is kept open and cleaned out thoroughly once a week with a daily cleaning by the apparatus engineers. The claimant testified there are holes in every part of the station and trash and insects are there on a daily basis. The claimant testified that he had seen spiders at Station 15 on many occasions along with spider webs. The claimant testified that he had previously held a job in pest control and he considered the spider situation as problematic.

The claimant testified to noticing his knee again the morning of February 5, 2005, about 5:00 a.m., when he was awakened by a fire alarm and found that putting pressure on his knee by standing was very painful. The claimant made that call but notified his captain that he was having great knee pain. Upon returning back to the station, the captain looked at the claimant's knee and there was swelling the size of a baseball and the knee was a darker red. The captain advised the claimant to go to the

emergency room. The claimant did go to the emergency room and was examined, x-rayed and given a shot of antibiotics and was given a two-day, off-work slip. The claimant next followed up with MedFirst and made five trips thereafter. According to the claimant, he was diagnosed with a spider bite and given care instructions at the emergency room for an insect bite. The claimant testified that prior to February 3, 2005, he had not cut, scraped or injured his knee in any way.

According to the claimant, his station assignment is Station No. 7 and his work uniforms and equipment are there unless he travels to other stations, then he places the uniforms in his personal vehicle and takes them with him. On February 3, 2005, the claimant went to Station No. 7 and picked up all his uniform and drove to Station No. 15. While working at Station No. 15, the claimant had on his uniform but his turnout gear was in the bay area on a concrete floor. On February 4, 2005, the claimant got a call for overtime and left Station No. 15 and went to Station No. 1 to work. He took a clean set of uniforms out of his truck and changed into those.

The claimant testified that he rents his home and has never seen spiders inside his home but has seen spiders outside. The claimant further testified that his wife had never seen spiders inside his home. The claimant reiterated that he had seen numerous spiders at Station No. 7, as well as spiders in the other stations he had worked.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused

internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2003). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant was diagnosed with an insect bite, suspected to be a spider bite. The first emergency room visit was February 5, 2005. Respondents accepted the emergency room visit and paid for two MedFirst visits, but controverted the claim on February 9, 2005. The claimant saw the doctor for four more visits and was treated for an insect bite with a staph infection and took antibiotics and had his knee lanced and dressed. The claimant's knee condition resolved by February 22, 2005, and his knee now feels fine. The claimant has incurred outstanding medical after respondents denied the claim.

Dr. Frederick Levin, the emergency room doctor who saw the claimant, has summarized this case very succinctly with his assessment that while the claimant did not see the spider bite him, he had been around spiders in his work station, "so it was more circumstantial type evidence." (Dep., p. 9, lines 14-15.) Dr. Levin testified that he frequently sees spider bites in the emergency room and it is not unusual to see a large area of inflammation such as the claimant's. Dr. Levin testified that within 24 hours after being spider bitten, you would expect to see swelling.

In the present case, respondents contend the claimant's employment did not place him at a greater risk than the general public and therefore is not a compensable injury. An injury is deemed to arise out of the employment under the positional risk doctrine, if it is one that would not have occurred but for the fact that the conditions and obligations of the employment placed the employee in the position where the injury occurred. *Kendrick v. Peel, Eddy & Gibbons Law Firm*, 32 Ark. App. 29, 795 S.W.2d 365 (1990). The positional risk doctrine is implicated in circumstances where an employee is injured by a neutral risk to which she is exposed due to the conditions and obligations of her employment. *Id.* A neutral risk means that the risk which caused the injury was neither personal to the appellant nor distinctly associated with the employment. *Diffenbaugh Industries & Travelers Ins. Co. v. Angus*, 313 Ark. 100, 852 S.W.2d 804 (1993).

I find the claimant has proven by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment. The claimant was a credible witness who described his work station and responsibilities and first noticed pain in his knee on February 4, 2005, about 4:00 p.m. The claimant had worked a 24-hour shift on February 3, 2005, from 7:00 a.m. until 7:00 a.m. on February 4, 2005. The claimant then started his overtime shift and worked until 7:00 a.m. on February 5, 2005. The claimant described a number of calls he participated in while on duty on February 3, 2005, through February 5, 2005, where he was outfitted in his turnout protective gear that is stored in the open bays. The claimant did not see the spider bite him but displayed all the symptoms of such a bite and credibly testified that he had observed spiders in all the fire stations where he worked. The claimant also

described a fire alarm on February 3, 2005, where he had to kneel on the ground and pull off boards on a structure that was on fire. The claimant was treated for a spider bite and an infection developed requiring a few extra doctor's visits.

After only an emergency room visit and six doctor's visits, the claimant's condition resolved and his knee is no longer problematic. According to the claimant's testimony, he missed only one day of work with his knee. The controverted claim involves only four doctor's visits and no indemnity benefits. I was persuaded by the claimant's credible testimony and by the medical reports, to include Dr. Levin's deposition testimony, that the claimant sustained a spider bite and find all the circumstantial evidence was that this occurred while the claimant was in the course and scope of his employment. I further found the claimant's testimony compelling that his turnout gear was stored in an open bay with spiders visible and find his injury arose out of his employment under the positional risk doctrine.

Ark. Code Ann. §11-5-508 provides that the employer shall promptly provide for an injured employee such medical as may be responsibly necessary for the compensable injury. Respondents are responsible for the medical the claimant incurred for treating his knee injury.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his knee arising out of and in the course of his employment. Respondents are responsible for medical the claimant has incurred for treating his knee injury.

No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. §11-9-715.

Therefore, no attorney's fees are awarded.

All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. §11-9-809

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE