

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F205463

BONNIE REEVES,
EMPLOYEE

CLAIMANT

ACTRONIX, INC.,
EMPLOYER

RESPONDENT

LIBERTY MUTUAL INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 18, 2005

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Mountain Home, Baxter County, Arkansas.

The claimant was represented by HONORABLE FREDERICK SPENCER, Attorney at Law, Mountain Home, Arkansas.

The respondents were represented by HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on November 3, 2004 in Mountain Home, Arkansas. A prehearing order was entered in this case on June 29, 2004. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or during the course of the hearing and are hereby accepted:

1. Jurisdiction of the Commission.
2. The parties stipulate to the employment relationship and to a compensation rate of \$206/155.
3. The claimant asserts a specific injury on 4/24/02.
4. The respondent has controverted this claim.
5. The claimant brought two spiders to the hearing in a bag.
6. The parties do not know what kind of spiders are in the bag.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable injury.
2. Whether an alleged spider bite is a risk of the claimant's employment and, therefore, an accidental injury arising from the employment.
3. The claimant has paid out of pocket for all of her medical bills and medical mileage. We are requesting she be reimbursed this amount along with medical mileage expenses.

4. Attorney's fees.
5. Positional risk vs. increased risk as the legal standard on whether a spider bite arises out of the employment.

The record consists of the November 3, 2004 hearing transcript and the exhibits contained therein.

DISCUSSION

To prove the occurrence of a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In discussing the standard for determining whether a spider bite "was the result of an accident arising out of and in the course of" employment, the Arkansas Court of

Appeals explained as follows in Gerber Products v. McDonald,
15 Ark. App. 226, 691 S.W.2d 879 (1985):

"Arising out of the employment" refers to the origin or cause of the accident while the phrase "in the course of employment" refers to the time, place and circumstances under which the injury occurred. There must be a causal connection between the accident and a risk which is reasonably incident to the employment. There must be affirmative proof of a distinctive employment risk as the cause of the injury. The connection with the employment cannot be supplied by speculation. It is not, however, essential that the causal connection between the accident and the disability be established by medical evidence. [Internal citations omitted].

In the present case, the March 2003 opinion of Dr. Nachtigal and the and the February 2003 opinion of Dr. Adkins persuade me that the claimant's medical problem at issue is in fact caused by the bite of a brown recluse spider.

However, the preponderance of the evidence also persuades me that the bite did not occur while Ms. Reeves sat at her desk at work on April 24, 2002. In reaching this conclusion I find credible Ms. Reeves' testimony in its entirety, and in fact I note that her testimony regarding what she felt and what she did on April 24, 2002 is corroborated by a co-worker and by her initial medical reports. There is no doubt in my mind that, while sitting

at her desk at work on April 24, 2004, Ms. Reeves felt a sensation on her thigh as if she had just been bitten and slapped at the spot in response.

However, I note that the literature in the records indicates that normally a brown recluse bite causes no pain initially and goes undetected until some hours later when the symptoms then begin. The literature in the record also indicates that the brown recluse spider is not by nature aggressive.

In light of these general principles regarding the brown recluse spider and its bite, I am not persuaded that a brown recluse spider fell onto or crawled onto Ms. Reeve's pants leg while she sat at her desk, then the spider crawled underneath the pants up to her thigh and bit her, causing an immediate onset of symptoms. The literature indicates to me that it is more likely that the bite instead occurred some hours earlier (i.e., while Ms. Reeves was still in bed or when she put on her clothes), that the sensation she felt immediately prior to slapping her leg at work was the delayed pain onset typical of a brown recluse spider bite, and that the bump that she and Ms. Taylor observed shortly thereafter was the normal mark that appears for some period after a typical brown recluse spider bite. In reaching my

conclusions, I note that neither Ms. Reeves or Ms. Taylor actually observed a dead spider when Ms. Reeves slapped or when the two put medicine on Ms. Reeve's leg shortly thereafter. I also note that Ms. Reeves was wearing calf-length pants at the point she felt the bite sensation on her thigh (i.e., upper leg covered in cloth) between her knee and her crotch.

In reaching my conclusions, I realize that employees at Actronix observe spiders within the facility at work and I realize that Ms. Reeves does not observe spiders within her own home. However, I note from the literature in the record that the brown recluse is nocturnal and does not build a web to trap its prey. Therefore, I point out that, based on the literature in the record, the brown recluse does not appear to be a spider whose presence would normally be observed either at work or at home.

Because the evidence in this case fails to establish by a preponderance of the evidence that Ms. Reeves' brown recluse bite occurred at work (i.e., in the course of her employment), I find that her claim for benefits must be denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Jurisdiction of the Commission.

2. The parties stipulate to the employment relationship and to a compensation rate of \$206/155.

3. The claimant asserts a specific injury on 4/24/02.

4. The respondent has controverted this claim.

5. The claimant brought two spiders to the hearing in a bag.

6. The parties do not know what kind of spiders are in the bag.

7. The claimant has failed to prove by a preponderance of the evidence that her brown recluse spider bite occurred in the course of her employment at Actronix on April 24, 2002. The claimant has therefore failed to prove by a preponderance of the evidence that she sustained a compensable spider bite injury.

ORDER

For the reasons discussed herein, I find that this claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge