

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F606340

SHUNDA TAYLOR, EMPLOYEE

CLAIMANT

**EAST ARK. AREA AGENCY ON AGING,
SELF-INSURED EMPLOYER**

RESPONDENT

RISK MANAGEMENT RESOURCES, TPA

RESPONDENT

OPINION FILED JANUARY 2, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on October 13, 2006, at Forrest City, St. Francis County, Arkansas.

Claimant appeared pro se.

Respondent represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers' compensation benefits.

On September 19, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1. The testimony of the claimant coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Ms. Shunda Taylor, the claimant, with a date of birth of February 12, 1977, has two and one-half years of post-secondary education. Claimant commenced her employment with respondent on July 1, 1999, as an in-home nurse's aide. Regarding her job duties, claimant testified:

And I go into their homes and help take care of the elderly people. Like say if they need their house cleaned or floor mopped, bathtub cleaned, refrigerator, or whatever, you know. Personal care, do they have grooming or whatever. (T. 6).

Claimant worked a 40-hour work week at \$7.25, per hour.

On May 31, 2006, claimant worked at a residence of Ms. Claudette Gaine, 160 Rogers Street, Marianna, Arkansas. Claimant's testimony reflects:

I went into the home that day. And I have certain days that I do different areas or whatever, different things. And I went into the home, and I went into, I was in her bathroom. I had already complained about spiders being around and everything because I had got bit on my stomach before. Then I, as I went into the bathroom I was cleaning her bathtub. And I felt something crawling up my leg. And I hit my leg, you know. And as I hit my leg I had, I hit my leg and I raised my pants leg up. And that's when I got, I had a spider, it had like it was just balled up real, real tight like a light brownish, sort of like a brownish spider.(T. 7).

Claimant asserts that her left leg had been bitten. Claimant continued:

And after I, after it bit me, you know, I called the office to notify them to let them know, you know, that I had been gotten bit by a spider. And then while I was, I kept on working. You know, it felt like everything was okay. I left that house, and I had went to, back out in the country to another house and everything. And I was out there, and it felt like it was just stinging and my leg was like stinging and burning. You know like something just, you know, just burning. And my leg, and then at one point it started swelling. And I called my office back again. And I told - - once I called the office back again and told them about it, they told me to call workers' comp right then. (T. 8).

Claimant estimated that the spider bite occurred at approximately 9:00 a.m. Further, the

testimony of the claimant reflects that she reported the spider bite to her supervisor, Ms. Shirley Butler, on the morning of the occurrence.

The testimony of the claimant reflects that she was furnished a telephone number to the workers' compensation third party administrator by Ms. Butler. Claimant, after reporting her injury to the third party administrator, was given name and address of a physician, Dr. Jacobs, in Wynne, and directed to obtain medical treatment from same.

The claimant resides in Marianna. Claimant's parents drove her to Dr. Jacob's office in Wynne. Claimant testified:

My mon, my parents, they drove me to Wynne. And I wen to Dr. Jacobs. When I made it to Dr. Jacobs, I had like a little, it was a little bitty bubble, like a little bitty bubble on top of it that came up on top of my skin. And Dr. Jacobs sent me over to the hospital in Wynne. And the hospital took some little thing and popped the little bubble that was on top of my leg.

Uh-huh. And they squeezed it and everything. And then after that, Dr. Jacobs made arrangement for me to come back to see him on that, this was that Wednesday. That Friday I had to go back to Dr. Jacobs. By the time I made it back to him that Friday, my whole, this whole part of my leg was black and it had been swole up. And when I came in, he said it had to got worser from then to now. You know from then on up to that Friday. So that Friday I got into his office, and he told me he had to do surgery on my leg right then and there. So he took me back into a little room back in his office, and he cut my leg about that much.

About, the first gash right here in my fingertip. And he went in it and he got all the poison. He said that he didn't want nothing to touch the rest of my skin or anything like that. And he, after he lanced it, well I had to, he didn't give me no pine killer or nothing like that because I'm pregnant, high risk pregnancy. And so I had to take all that pain by itself. And then after he did that he, I don't know what else he did into it. But after I left the office, he told me when I come home I had gargles (phonetic) stuck around over in my leg like a long white gargle stuck over my legs. And he told me the nest day to have that, to pull it out when I check my bandage, just pull it out. And he gave me a prescription for some medicine to wash my hands with after I changed my bandages and everything or whoever changed it, be sure to use this certain little soap thing that I got. And so

after that, I went back the following, I don't know if it was that Wednesday or that Friday. That Monday when I go back there, I went back that Monday. And he said that he still wouldn't let me go to work. He wrote me up like a prescription to take over to Eastern Arkansas Area on Agency. And after they got it I still, they took me off from work for I think he had for two weeks then. And I kept going backwards and forth to him. He kept checking up on me. But he said it was healing okay and doing pretty good. So then workers' comp, when I went back the next time workers' comp said that he notified me, he said workers' comp said that they wouldn't pay for you seeing me or something. And he released me that same day that workers's comp said they wouldn't pay me, they faxed something over to him or something he said. But he would not, he faxed something overt to them. And when I got there - - so I got home and I called workers' comp. And she said everything was okay. So she was just trying to get in touch with me, and she couldn't get in touch with me. So then I got another notice then. And that's when workers' comp told him that they wouldn't pay me, pay him, Dr. Jacobs released me that day, the same day. And my leg was still not healed. And then I called, I went over to my - - no, my prenatal doctor, that's when my prenatal doctor came in. And he would not let me go back to work because my wound was still open. (T. 10-12).

On July 3, 2006, claimant was released to returned to work, after having been off work since May 31, 2006. However, the claimant's prenatal physician would not allow her to return to work at that time due to the open wound. In September 2006, the claimant's employment was terminated by respondent.

The testimony of the claimant reflects that after respondent notified Dr. Jacobs' office that it would not be responsible for her medical bills, the bills were filed with her health care provider, Blue Cross/Blue Shield. Claimant was responsible for the co-pay.

Claimant testified that approximately three weeks prior to the May 31, 2006, spider bite she suffered a spider bite to her stomach at the same residence:

About three, maybe three weeks. One bit me, a spider bit me on my stomach. And I went to my prenatal doctor. And I reported that one. No. I reported it to them. But I reported it after. I didn't think nothing of it because it didn't do anything then. And it bit me here, and they lanced my stomach on the side, and had to, you know, get all that poison out because they was afraid it was going to affect my child. (T. 16).

The claimant's testimony reflects that she took the spider from the second bite, May 31, 2006, with her to Dr. Jacobs' office at the time of the initial visit:

Yes, sir. I took it. The spider once it bit me, I took it in with me in a piece of tissue. I took it to the doctor with me. And I seen a statement, one of the statements on the paper that said that he don't know if it was a spider bite or not. Or he didn't see a spider. I didn't bring anything in at the last court date i had. But I took one in. (T. 16-17).

The testimony of the claimant reflects that prior to proceeding to Dr. Jacobs's office for medical treatment for the May 31, 2006, spider bite she went by the office of respondent to pick up some paper to take to doctor visit. At the time she stopped by the office claimant testified that she talked with her supervisor and showed her leg, however she did not show the supervisor the spider.

During cross-examination, claimant testified that she recovered from the prior spider bite and that the medical treatment was rendered by her prenatal physician, Dr. Sarinoglu. Claimant maintains that she suffered both spider bites at the same location:

No because this one house had been boarded up for over years and years. And my client, she's blind. That's one reason why I wanted to report it. But she's blind. And I reported this constantly. Someone need to come in and spray for spiders. Something needed to be done about the spiders. I constantly called the office and tell them, something need to be done because you go in different room, you know at the ceiling, and you could just see them crawling on the curtain in the bathroom, in the bathtub. You see it. (T. 19).

Claimant acknowledged that the medical evidence reflects that she had a staph infection, which she denies ever having previously. Further, claimant denies that she was around anyone that had a staph infection. Regarding being in an environment where she could have pick up a staph infection, claimant testified:

I haven't the slightest idea, if it is. Only thing I could see is I've been on this job for so many years, and I've never got bit by a spider or

anything. You know, this is my first problem I ever had through my job. And I didn't understand how that a staph infection come about because on the papers he told me that he did not, he didn't know if it was a spider bite or not. So if it's a big question mark saying he don't know, how can he say it's a staph infection? (T. 20-21).

Claimant's testimony reflects that Dr. Jacobs performed the surgical procedure in his office on Friday, June 2, 2006. The testimony of the claimant reflects that it was at that time Dr. Jacobs provided her the soap and instructions to wash her hands and to make sure it did not spread. Claimant testified that Dr. Jacobs released her to return to work on or before June 10, 2006, because her claim had been denied by the third party administrator of respondent's workers' compensation program.

The testimony of the claimant reflects that between the time Dr. Jacobs released her to return to work, June 12, 2006, and when she return to work on July 3, 2006, she was at home continuing to recover from her injury. Claimant noted that she was unable to drive and that her leg wound was still open. Claimant testified that while she was supposed to be off work until the end of July 2006, once the wound closed she obtained permission from her prenatal doctor to return to work on July 3, 2006.

Claimant's testimony attributes her incapacitation to a spider bite rather than a staph infection:

I don't think it's a staph infection because if it was a staph infection, I done had skin test done and everything. I done had all these different things done. If it was a staph infection, that should have done showed up. I done went for prenatal care. They done drew blood. They done did all of this. They should have fund a staph infection somewhere. I've had blood work done. (T. 24).

Claimant concedes that she has not been checked for staph infection since Dr. Jacobs said she had one, although she has been check out by her prenatal physician, who said everything was

okay.

Regarding the current status of her leg, claimant noted that while the top had healed, it still a little sore. Claimant denies having other outbreaks of staph on any other place on her body. The testimony of the claimant reflects that Dr. Jacobs provided a course of Bactrim antibiotics:

He gave me two different kinds of infection [antibiotics].
He gave me one I can't think of the name of it, but it was a gray pill.
And then he called into my prenatal doctor. And that's when he changed it over. That Wednesday he gave me one. And I took medicine from that Wednesday up to that Friday. After he got in touch with my prenatal doctor and found out I was high risk pregnancy, he switched that medicine over and gave me the pills Bactrim, bacteria, something like that. (T. 26).

The medical in the record consist of a off work slip authored by Dr. Jacobs relative to the claimant and a response of Dr. Jacobs to in inquiry by respondent. The June 2, 2006, off-work slip of Dr. Jacobs reflects a diagnosis of he claimant's complaint as "staph" positive for MSRA, and noted that the claimant would be unable to work until June 12, 2006. (RX. #1). A June 12, 2006, response from Dr. Jacobs relative to a June 8, 2006, inquiry of respondent reflects, "Dr. Jacobs stated . No he does not believe a spider bite could get this bad in one day". (RX. #1).

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, review of the medical and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On May 31, 2006, the relationship of employee-employer existed between the parties.
3. On May 31, 2006, the claimant earned wages sufficient to entitle her to weekly

compensation benefits of \$193.00/\$154.00, for temporary total/permanent partial disability.

4. On May 31, 2006, the claimant did not sustain an injury arising out of and in the course of her employment pursuant to the provisions of Ark. Code Ann. §11-9-102 (4) (A) (i).

CONCLUSIONS

The claimant, who is employed by respondent as an independent living assistant, maintains that she suffered in injury within the course and scope of her employment when she was bitten on her left thigh by brown spider on May 31, 2006. The injury required medical treatment and rendered her totally incapacitated from the date of occurrence until July 3, 2006. Claimant seeks corresponding medical and temporary total disability benefits as a result of the afore. Respondent denies that the claimant sustained an injury within the course and scope of her employment.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provisions. In order to prove 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: an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4) (A) (i). Should the claimant fail 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. Engineered Specialty Plastics*, 56 Ark. App. 126, 938

S.W.2d 876 (1997).

While the range of the job tasks performed by the claimant in her employment with respondent varied from household cleaning to attending to person hygiene of some of the clients, claimant attributes her injury to a spider bite sustained while cleaning a bathroom of a client. Additionally, claimant maintains that the symptoms that she presented with at the office of Dr. James Jacobs, respondent's designated medical provider, manifested from the time of the injury at approximately 9:00 a.m. until the visit, all on the same day.

It is undisputed that a culture was obtained from the site of the claimant's complaint on May 31, 2006, pursuant to the directions of Dr. Jacobs. The culture yield a positive result for MSRA, a staph infection. Further, the treatment regime prescribed by Dr. Jacobs was consistent with the afore diagnosis. Finally, in response to an inquiry from respondent, Dr. Jacobs relayed his opinion that he did not believe that a spider bite could produce the symptoms displayed by the claimant in one day.

There is no medical in the record reflecting that the claimant's need for medical treatment and incapacity was the product of a spider bite. Claimant acknowledged that she did not show the spider which had bitten her to her supervisor when she stopped by the office en route to Dr. Jacobs' office on May 31, 2006. The claimant has failed to sustain her burden of proof by a preponderance of the evidence that she suffered an injury in the form of a spider bite arising out of and in the course of her employment on May 31, 2006. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE

