

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F704113

RICHARD E. BROOKS, EMPLOYEE	CLAIMANT
R. A. BROOKS TRUCKING COMPANY, INC., SELF-INSURED EMPLOYER	RESPONDENT
RETENTION MANAGEMENT SERVICES, INC., BENEFITS ADMINISTRATOR	RESPONDENT

OPINION FILED FEBRUARY 1, 2008

A hearing was held before Administrative Law Judge Richard Calaway, on November 13, 2007, in Little Rock, Pulaski County, Arkansas. Submitted for ruling before Administrative Law Judge Chandra Hicks, on January 14, 2008.

The claimant was represented by The Honorable J. Mark White, Attorney at Law, Bryant, Arkansas.

The respondents were represented by The Honorable Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on November 13, 2007, in Little Rock, Arkansas. A Prehearing Order was previously entered in this case on September 20, 2007.

The following stipulations were submitted by the parties, either in the Prehearing Order or at the start of the hearing, as these are hereby accepted:

1. The employee-employer relationship existed at all pertinent times.
2. This claim has been controverted in its entirety.
3. At the time of the hearing, the parties agreed to a

weekly temporary total disability rate of \$308.00, and a weekly permanent partial disability rate of \$231.00.

By agreement of the parties, the issues to be presented at the hearing were as follows:

1. Compensability of claimant's sting or bite to his leg.
2. Reasonable and necessary medical and related expenses.
3. Temporary total disability benefits from April 18, 2007, until he returned to work on or about June 1, 2007.
4. Attorney's fees for controversion.
5. Other possible issues were reserved.
6. Notice.

The claimant contends that on or about April 12, 2007, he sustained a compensable injury, a sting or bite on his leg, which resulted in necrotizing fasciitis, for which he should be awarded benefits, including reasonably necessary medical and related expenses and temporary total disability benefits from April 18, 2007, until he returned to work on or about June 1, 2007. An Attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contend that the claimant did not sustain an injury at work. They further contended that the condition for which he was treated was not the result of an injury arising in the course and scope of his employment. Finally, in the alternative, they contended that if the claim is compensable, they are not

responsible for benefits otherwise accruing before receipt of notice on April 23, 2007.

The documentary evidence in this case consists of the Commission's Prehearing Order of September 20, 2007, which was marked as Commission's Exhibit No. 1. The claimant's medical packet was marked as Claimant's Exhibit No. 1. The respondents' medical packet was marked as Respondents' Exhibit No. 1. The Form AR-C was marked as Respondents' Exhibit No. 2.

The following witnesses testified at the hearing: the claimant and Donna Brooks.

DISCUSSION

The claimant, age 48 (7/27/59), maintains that on April 12, 2007, he sustained an injury as a result of a bite or sting to his right leg while working for the respondent-employer. The claimant testified he works for the employer, R.A. Brooks Trucking Company, Inc., as a truck driver. The claimant admitted a family relationship with the employer, as his father owns the company. He specifically testified, with respect to the alleged incident:

A. Went to load a load of apples and went back up to the dock, and I was putting pallets into the trailer for me to load the apples on. And felt something sting or bite the back of my leg. And I just reached down and rubbed it with my hand and just kept on going with my job.

Q. Okay. So you say you were moving some pallets?

A. Yes, sir.

Q. Now, is that part of your job assignment for R. A. Brooks Trucking?

A. Certain shifts, when they have to have us to, yes, sir.

Q. What city were you in when this happened?

A. Yakima, Washington.

Q. And you were there delivering a load for --

A. I was picking up a load.

Q. And that was for your employer?

A. Yes, sir.

Q. Do you know what caused that sensation you felt in your leg?

A. No, sir, not exactly. It just felt like a sting or a bite, and I just, naturally, just rubbed my hand back on the back of my leg, and just kept on loading the pallets on the trailer.

Q. What do you suspect it was?

A. A spider bite.

According to the claimant, the bite occurred at the back of his left leg. However, the claimant further testified that the main area affected now is the back of his knee, right in the bend, as this occurred on the 12th and his wife was with him at the time this happened. The claimant denied feeling a sensation, sting or bite on his elbow. After they finished loading, he testified that he signed the bills, went and scaled the truck and weighed it and went down to Pendleton, Oregon, at the Arrowhead Truck Stop. Thereafter, the claimant testified he went to bed, got up and had his wife check his leg before taking a shower, and coming on down toward Arkansas.

The claimant essentially testified that the initial day after the incident, he did not notice anything unusual about his leg, except his wife looked at it before they laid down and it just seemed red. However, he further testified that over the next few days, it started swelling, as he could barely push in the clutch on his truck. According to the claimant, it finally reached a point to where he could barely walk. He testified that once he reached the yard, in North Little Rock, the dispatcher, (James Brooks), told him to go to the hospital, the emergency room. The claimant believes this occurred on the 18th. According to the claimant, he went to the emergency room, and received treatment in the form of antibiotics and pain pills.

He explained that at this time, he really did not know specifically what was wrong with his leg, as he just knew that there was a problem. The claimant testified, the next day when he got up to go the bathroom, he slipped and fell flat on his face, as he was unable to walk. The claimant testified he was scheduled to leave out on the truck again, but decided he could not, so his wife took the loaded trailer up to his father, at Clarksville, and switched trailers with him, so she could come back. According to the claimant, by the time his wife got back on Friday (the 20th), he had already gone back to the emergency room. At that time, the claimant described his leg as being, "Like bubbles with black stuff coming out of them." The claimant testified that he underwent

surgery, and was discharged from the hospital 14 days later. He testified that after his release, Home Health Care came in three days a week. The claimant admitted to seeing Dr. Shaw.

According to the claimant, after going to the emergency room on April 18th, he did not return to work until June 1, (2007). He testified he went back to work because he needed the money. The claimant testified that he continues to treat with Dr. Shaw, as his next appointment as of the date of the hearing, was scheduled for November 19, 2007. With respect to the condition of his leg, he specifically testified, "It's got about a three-inch spot right in the center of it where --and about an inch and a half wide, that's still open wound."

Although emergency room notes mentioned a wound or an abscess or something on his elbow, the claimant denied having problems with his elbow since being in the hospital. He denied ever being given a diagnosis of what was wrong with his elbow. The claimant further denied that any doctor ever gave him a reason to think there was a connection between his elbow problem and his leg problem.

On cross examination, the claimant testified he was positive that the incident occurred on the 12th rather than the 13th. He admitted to wearing full-length pants on the day of the incident. The claimant also admitted he did not know if the sting/bite was through or inside of his pants. He further admitted that he never saw any spiders, bugs or anything in the back of his truck, nor

were there any dead spiders or bugs in his pants when he took them off that night. He also admitted that there were not a lot of bees and yellow jackets or anything around that he noticed. He denied having any holes in his pants when he took them off.

The claimant admitted to having three dogs (beagles) in his truck, as they are with him full-time, any time that he is on the road. He essentially admitted that if medical records demonstrate that his elbow was drained for an abscess at the same time that they drained his leg, he has no reason to dispute this. The claimant testified that although his wife put on the Form C that a spider caused His injury, he does not know what bit him. He admitted that his wife completed most of his workers' comp paperwork. The claimant further admitted he was uncertain as to whether he was bitten or stung. However, the claimant admitted he has been pleased with Dr. Shaw's medical treatment.

Upon being questioned about medical insurance coverage, the claimant admitted that he does not have medical coverage and that his father cut "everybody's insurance," once he became eligible for Medicare/Medicaid. He admitted that no doctor has told him that they had conclusive evidence that there was spider venom in his leg.

The claimant gave the following testimony concerning notice to his employer:

Q. This First Notice of Injury, completed on 4/23/07, you concede that that's the first time your employer was

made aware that you were filing a workers' comp claim?

A. That's when he told us to, yes, sir.

Q. 4/23/07?

A. I believe it is.

Q. Okay. And that's after you've had this surgery. Right?

A. Yes, sir.

Q. You're in post-op recovery?

A. Yes, sir.

Q. James is your brother?

A. Yes, sir.

Q. And your supervisor, too?

A. Yes, sir.

He admitted that since going back to work on June 1st, he does not have any type of functional restrictions or limitations with his leg as far as his ability to push, pull, or move it. According to the claimant, he has to just take care of the wound, by putting ointment/cream on it until it heals. He denied that a skin graft had been recommended, as of the date of the hearing.

On redirect examination, the claimant denied that between April 12th and April 18th, ever being scratched by his dog or them having caused a break in the skin on his leg. The claimant maintains that James was made aware of his problem by his wife the day after the incident, and when he got back on the yard on the 18th, he showed it to him. The claimant further admitted that James

is the one who told him to go to the doctor.

On recross examination, the claimant admitted that his dogs sleep in the cab with him, in the front or in the bed.

The claimant's wife, Donna Brooks, also gave testimony. She admitted to working for R.A. Trucking, as a team truck driver, with the claimant. She gave the following testimony as to what she observed on the day of the incident:

A. Well, I was in the truck. When he came in the truck, he was rubbing his leg, and I asked him what was wrong, what he was rubbing his leg for. He said it felt like something like a sting or a burning feeling.

Q. Okay. Did you observe his leg or look at it?

A. Not right then, I didn't.

Q. Okay. Did you later?

A. Yeah. In Pendleton. We was going to Pendleton over there. I looked at it. He was still complaining about his leg hurting.

Q. All right.

A. So I went and took his - - he put his pants down and I looked at it, and it had like two little puncture marks, and it was red around it.

The claimant's wife testified that over the next few days, the claimant continued to complain about his leg hurting and the redness kept getting bigger around it. According to Mrs. Brooks, she told Jimmy Brooks, the claimant's brother, about the bite the next day. She admitted to talking to Mr. James Brooks again later about the claimant's leg. Mrs. Brooks maintains that after they got back to Arkansas, she talked to Jimmy over the phone and told

him they were going to have to take the claimant to the emergency room and have his leg checked out, as the red place was getting bigger. Mrs. Brooks admitted to talking to hospital personnel about workers' comp on the 21st and had no reason to believe this date was incorrect.

On cross-examination, Mrs. Brooks admitted the first time she let James or anyone know they were going to try and put this on workers' compensation was once the claimant had the surgery.

Upon being questioned by the Commission, Mrs. Brooks essentially admitted she told Jimmy that the claimant needed to go to the emergency room prior to the first visit. At which point, she maintains that Jimmy had not seen what was wrong with the claimant's leg.

A review of the medical evidence demonstrates that the claimant was seen at the emergency room of Baptist Health Medical Center, in North Little Rock, on April 18, 2007, complaining of painful swelling behind the left leg and the right elbow. The reported that his symptoms started three days ago. Dr. James Darr reported the following on examination of the claimant:

BONES, JOINTS, EXTREMITIES: Left lower extremity on the popliteal fossa, posterior aspect of the leg, there was an area approximately 10-12 cm in length, maybe 5 cm in width that was quite erythematous, warm to touch and quite indurated and tender on palpation with a small scab lesion noted centrally but there was no area of fluctuance that could be appreciated. No joint involvement could be appreciated. Good range of motion of the joint. The right elbow had an area of warmth and swelling approximately 3-4 cm in diameter, circular, once

again indurated but no fluctuance noted but tender on palpation. Neurovascularly intact distally in all extremities.

He assessed the claimant with "cellulitis," and discharged him home with wound care instructions. The claimant was further instructed to follow-up with his primary care physician, and to return to the emergency department if he had acute worsening of his symptoms.

The claimant returned to the emergency room on April 20, 2007. Dr. Stephanie Cody wrote:

HISTORY OF PRESENT ILLNESS:

The patient is a 47-year-old white male who presents complaining of severe pain, swelling and redness to his left lower extremity. He was seen yesterday in the emergency room for an abscess and was started on antibiotics. He states that it is not getting any better. He is complaining of feeling like he has had fever but he has not checked it. He has no chest pain or shortness of breath.

EXTREMITIES: He has erythema extending from mid thigh to ankle with a large abscess noted to the let posterior thigh. It is purulent and draining. It is concerning for questionable<-----> fasciitis.

DIAGNOSIS:

Abscess secondary to cellulitis, rule out <-----> fasciitis.

The claimant underwent surgery on April 20, 2007, with Dr. R. Haley Shaw. The claimant had preoperative and postoperative diagnoses of, "necrotizing fasciitis, left leg, and right elbow

abscess." The two operative procedures included, and radical debridement, left leg, and incision and drainage of the right elbow abscess. Dr. Shaw reported the following:

INDICATIONS:

A 47-year-old Caucasian male with a rapidly progressive and severely painful leg abscess. I was consulted on arrival to the emergency department and examined the patient and was very concerned for necrotizing soft tissue infection. He is brought to the operating room immediately for drainage.

FINDINGS:

Severe necrotizing fasciitis involving the muscular fascia, but the muscle all seemed viable. This extended over the gastrocnemius muscle and up into the lower thigh.

A pathology report dated April 23, 2007, demonstrated the following Final Diagnosis:

FINAL DIAGNOSIS

Soft tissue from left leg, debridement: Fibroconnective adipose tissue with vascular structures associated with acute inflammation, abscess formation, inflammatory granulation tissue and with changes consistent with secondary arteritis, benign.

On April 24, 2007, the claimant underwent "incision and debridement, and partial closure of leg wound."

A discharge summary dated April 27, 2007 demonstrates, in pertinent part, the following:

ADMITTING DIAGNOSIS:

Necrotizing fasciitis, left leg.

DISCHARGE DIAGNOSIS:

Necrotizing fasciitis, left leg.

OPERATIONS AND/OR PROCEDURES:

Radical debridement, left leg x 2.

HISTORY OF PRESENT ILLNESS:

This is a 47-year-old Caucasian male, who is a truck driver from Oklahoma. He had previously been seen in the emergency department for an abscess on his left leg. He was treated with antibiotic and released. He returned today with much worsening of his lesion. He also has a new lesion on the leg. He presents at this time for debridement.

HOSPITAL COURSE:

The patient underwent radical debridement of his left posterior leg, including the popliteal fossa. This involved widespread destruction of skin, subcutaneous tissue and fascia, but no muscle, nerve tissue or blood vessels were involved. He underwent wound care for several days and was returned to the operating room, where he underwent partial closure and placement of a wound vacuum. The remainder of his hospital course was uneventful.

Upon discharge, the claimant was instructed to return for follow-up treatment with Dr. Shaw on May 7, 2007. It is also noted that the claimant would be undergoing wound vacuum care.

On May 2, 2007, Dr. Shaw wrote:

Richard Brooks is a patient of mine who was hospitalized with a life-threatening infection in his leg on April 20, 2007. This began on April 11 or April 12, 2007, when he was unloading crates in Yakima, Washington. The patient states that he had just gotten finished unloading the crates when he felt a sting behind his left leg. This progressively worsened, and he sought care in the emergency department on April 18, 2007, and was treated with antibiotics and released. He returned on April 20, 2007, with worsening and was found to have a life-threatening and limb-threatening infection. This was due to necrotizing fasciitis which is the so called "flesh eating bacteria". He required emergent radical debridement of skin, soft tissue, and muscle fascia on April 20, 2007. He required a repeat operation for further debridement and a partial wound closure on April 24, 2007.

His postoperative wound care was maintained with a wound vacuum which greatly facilitated wound closure and allowed me to avoid immediate skin grafting. This

is very important because the patient's wound crosses the popliteal fossa posteriorly. Skin grafting in this area would invariably result in a flexion contracture which would require multiple surgeries in the future. The wound vacuum has allowed for a partial closure of his wound naturally and has been critical and absolutely necessary for recovery of this patient, salvage of his leg, as well as salvage of full function of his leg.

The bacteria that was cultured from his leg is Staphylococcus aureus which was sensitive to all antibiotics. Therefore, I believe this infection began with local tissue trauma while unloading crates as the patient states and rapidly progressed thereafter.

The claimant returned for follow-up care with Dr. Shaw. He reported that the claimant was treated with radical debridement, delayed primary closure, and wound vacuum. Dr. Shaw reported that the claimant's wound looked terrific. Therefore, his assessment was healing open leg wound, for which he recommended physical therapy and continued him with wound vacuum for at least another two weeks.

On May 21, 2007, Dr. Shaw wrote the following:

Richard Brooks first became a patient of mine on April 20, 2007. He developed necrotizing fasciitis of the left leg. He required emergency debridement of the left leg for a life-threatening and limb-threatening illness. Mr. Brooks stated that the initial skin injury that was the beginning of this infection began on either April 11, 2007, or April 12, 2007, while he was unloading crates in Yakima, Washington. He felt a sting behind his left leg, which worsened. He sought care initially on April 18, 2007, in the emergency department and was treated with antibiotics and released. He returned on April 20, 2007. I examined the patient and determined he had a rapidly progressive soft tissue infection.

Mr. Brooks has been totally disabled since April 20,

2007. However, he has made a remarkable recovery thanks to two aggressive surgeries and vacuum-assisted wound closure. I expect him to make a full recovery but the date of his return to work is still unknown at this point. For the time being the patient is considered totally disabled until his wound is fully healed and he has completed his physical therapy.

I declare under penalty of perjury that I have examined this report and all statements contained herein and to the best of my knowledge and belief they are true and correct and complete to a reasonable degree of medical certainty.

The claimant returned for follow-up care of his leg wound on June 21, 2007. At which time, Dr. Shaw continued the claimant's topical wound care normal saline. He noted that overall the claimant was doing fairly well and able to work. Dr. Shaw reported he did want to interrupt his care at this point for a skin graft. Therefore, he decided to continue to see the claimant every three to four weeks and graft the this area if it ceased to progress.

On July 19, 2007, the claimant returned to Dr. Shaw. He assessed the claimant with, "scald healing on his leg wound." Dr. Shaw's recommendations included a change to Panafil for a three week trial and if the claimant did not improve in the next several weeks, he would consider him for splitting-thickness skin grafting.

On August 22, 2007, Dr. Shaw gave the following responses to the claimant's attorney, as these are highlighted by the bold print:

1.) You write in a letter of May 21 that Mr. Brooks related to you that he "felt a sting behind his left leg" on April 11 or 12, 2007. You diagnosed him with necrotizing fasciitis of the left leg. In your professional medical opinion, is it probable that the necrotizing fasciitis of the left leg arose from the sting incident of April 11 or 12, 2007?

Yes No

2.) What objective findings did you observe that support your diagnosis of necrotizing fasciitis?
Dead Fascia, fat, and skin documented at time of surgery and on pathology report. Review operative note and pathology report.

3.) Are your opinions given within a reasonable degree of medical certainty?

Yes No

An Employee's Notice of Injury Form, a Form AR-N, was filed on April 23, 2007. In this form, the claimant alleges an injury to the left leg. It states, "Was putting pallets down in trailer for loading when felt a sting in leg." According to this form, the claimant's injury occurred on April 13, 2007.

A Form AR-C was completed on May 21, 2007, wherein the claimant gave an injury date of April 12, 2007, due to a spider bite.

ADJUDICATION

The instant claimant maintains that on April 12, 2007, he suffered a compensable injury a result of what he described as a sting or a bite on his leg, and that this injury resulted in necrotizing fasciitis. Ark. Code Ann. § 11-9-102(4)(A) defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4) (D). The claimant's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4) (E) (i).

Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16) (B). Where a medical opinion is sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of the injury, that opinion is stated within a reasonable degree of medical certainty. Huffy Service First v. Ledbetter, 76 Ark. App. 533, 69 S.W.3d 449 (2002), citing Howell v. Scroll Tech., 343 Ark. 297, 35 S.W.3d 300 (2001). The Commission has the authority to accept or reject medical opinions and the authority to determine their medical soundness and probative force. Green Bay Packing v. Bartlett, 67 Ark. App. 332, 999 S.W.2d 692 (1999). A medical opinion based solely upon a claimant's history and own subjective belief that a medical condition is related to a compensable injury is not a substitute for credible evidence. Brewer v. Paragould Housing Authority, FC Opinion filed Jan. 22,

1996 (E417617). Likewise, medical opinions based upon "could", "may", "possibly", and "can" lack the definiteness required to satisfy Ark. Code Ann. § 11-9-102(16) (B) (Supp. 1999). Frances v. Gaylord Container Corporation, 341 Ark. 527, 20 S.W.3d 280 (2000). In Frances v. Gaylord, supra. the Arkansas Supreme Court expressly overruled a prior Court of Appeals decision to the extent that the Court of Appeals had held that such indefinite terms were sufficient to meet the requirements of Ark. Code Ann. § 11-9-102(16) (B). In Frances v. Gaylord, the Arkansas Supreme Court held that a doctor's opinion that an accident "could" produce a lumbar disc injury was insufficient to satisfy the standard of being "within a reasonable degree of medical certainty." Moreover, in Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000), the Arkansas Supreme Court held that a medical opinion based upon theoretical possibility of a causal connection did not meet the standard of proof. In Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001), the Arkansas Supreme Court held that in order for a medical opinion regarding causation to "pass muster" such opinion must be more than speculation, and go beyond possibilities. The holdings in Frances v. Gaylord, supra., and Crudup v. Regal Ware, Inc., supra., dictate that when a finding of compensability relies upon a medical opinion that fails to pass muster, reversal is mandated.

It is undisputed that the claimant suffered a very serious

injury to his left leg. However, I find that the claimant failed to prove by a preponderance of the credible evidence that he sustained a sting or bite to his leg by a spider or insect, within the course and scope of his employment.

Upon being questioned about the incident, the claimant admitted he did not know whether he was stung or bitten, nor did he see a spider or any insect about his person, in his truck or in his pants on April 12, 2007. He further admitted that he did not notice a lot of bees and yellow jackets around his work area. The claimant further admitted that although it was reported on the Form AR-C that a spider had bitten him, he was not certain about this. He further admitted that no doctor ever told him they had conclusive evidence he had spider venom in his leg.

The evidence as presented by the claimant is conflicting and confusing. Specifically, although the claimant's elbow displayed similar symptoms as those about his leg, when he first sought treatment, he denied having been bitten or stung on the elbow, nor does he assert this as a compensable injury. However, the surgical report clearly demonstrates that on April 20, 2007, the claimant had preoperative and postoperative diagnoses of, "necrotizing fasciitis, left leg, and right elbow abscess." The two operative procedures included, radical debridement, left leg, and incision and drainage of the right elbow abscess. I think the crucial question becomes, "what triggered this condition in his elbow?" What is particularly baffling, is the

fact that the evidence in this case is devoid of any explanation of the triggering factors for the claimant's elbow condition and/or symptoms.

The claimant and his wife gave conflicting testimony concerning the reporting of his injury upon their arrival to the yard, in North Little Rock, and as to when he was first instructed by his brother to go to the hospital. The claimant essentially testified he showed his injury to his brother when he got to the yard, at which point, he instructed him to go to the emergency room. However, the claimant's wife testified that she called the claimant's brother and told him they were going to have to take the claimant to the hospital, at which point he had not seen the claimant's leg. The claimant's wife's testimony demonstrates that the employer did not instruct the claimant to go to the hospital until his second visit.

It is reported on the Form AR-C that the claimant's leg injury occurred on April 12, 2007, due to "a spider bite." During the hearing, the claimant testified that his injury occurred on April 12, 2007; however, it appears that during his deposition, the claimant testified that his injury occurred on April 13, 2007. On the Form AR-N, it is reported that the claimant's injury occurred on April 13, 2007. According to this form, the claimant's injury occurred due to a "sting" while putting pallets down in his trailer for loading.

The medical records do not corroborate the claimant's

testimony. When the claimant first sought treatment on April 18, 2007, he reported that his symptoms started some three days ago, which would have been April 15, 2007, as this does not coincide with the alleged injury date of April 12th or even the April 13th date. In sum, this reporting is clearly inconsistent with the now alleged date of injury and his deposition testimony. In addition to this, none of the initial medical records (from April 18th or April 20th, 2007) mentions a sting or bite to the claimant's leg or an incident while putting down pallets. It was not until after the claimant's April 20, 2007, surgery that the Form AR-N was completed, wherein the work-incident is alleged.

Under these circumstances, it would require conjecture and speculation to conclude the claimant's leg condition arose out of and in the course of his employment. Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W. 2d 692 (1991). Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W. 2d 155 (1979).

While I realize that Dr. Shaw has essentially opined that the claimant's local tissue trauma to his leg started with the unloading of his truck, minimal weight is attached to this opinion when considering it with all of the remaining evidence, and the fact it was based on an inaccurate history provided by the claimant.

On the basis of the record as a whole, I find that the

evidence in this case fails to establish by a preponderance of the credible evidence that the claimant's left leg injury occurred during and in the course of his employment. Therefore, this claim is hereby, respectfully denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed on or about April 12, 2007, and at all other relevant times.
3. This claim has been controverted in its entirety.
4. The claimant's weekly temporary total disability rate is \$308.00 and his permanent partial disability rate is \$231.00.
5. The claimant failed to prove by a preponderance of the credible evidence that he sustained a compensable injury to his leg during and in the course of his employment with the respondent-employer.

ORDER

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

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge

CH/ml

