

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F710835

TRACY A. MAY

CLAIMANT

**HOT SPRINGS SCHOOL DISTRICT
(SELF-INSURED)**

RESPONDENT EMPLOYER NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

ORDER AND OPINION FILED APRIL 15, 2008

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant appeared PRO SE.

Respondents No. 1 represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Hot Springs, Arkansas on February 29, 2008. A prehearing conference was held on January 22, 2008, and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and introduced into evidence without objection.

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

1. There was an October 3, 2007, employer-employee relationship.
2. The compensation rates are \$504/378.

The claimant contends that she sustained a compensable injury on October 3, 2007, and is entitled to medical benefits and to temporary total disability benefits from October 8, 2007 through October 22, 2007.

Respondents contend the claimant did not suffer a compensable injury to her abdomen in the form of a staph infection or an abdominal abscess in the course and scope of her employment. Respondents contend the claimant's condition is an ordinary disease of life and respondent is not liable. Respondents further contend that there is no causal relationship between the alleged injury and the request for treatment for staph infection. Respondents further contend that the medical documentation does not support the claimant's compensable injury as being the major cause of her need for treatment. Alternatively, respondents contend it is entitled to an offset for group benefits paid if the claim is found to be compensable.

ISSUES TO BE LITIGATED

1. Compensability.
2. Medical benefits, medication and supplies.
3. Temporary total disability benefits.
4. Offset for group 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 October 3, 2007, employer-employee relationship.
2. The compensation rates are \$504/378.
3. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment and established by medical evidence.

DISCUSSION

The claimant works as a special education teacher for the respondent employer. According to the claimant, on October 3, 2007, she was teaching and a male student went into crisis and she had to implement professional crisis management. The claimant testified that the child was autistic and when he went into crisis, she was attempting to keep him from being self-abusive. The child head-butted the claimant and then struggled with the claimant trying to hold him and they both ultimately ended in a prone position on floor mats. The claimant testified that she had bruises and tears from the struggle. The claimant completed an incident report and knew she had superficial scratches on her arms, but did not know until she showered that evening that she had a skin tear on her stomach and bruising on her shoulder, arms and legs. The claimant filed an amended incident report on October 5, 2007, and included the skin tear. The claimant sought medical care over the weekend on a Sunday when she saw Express Care.

The claimant had medical care beginning October 7, 2007, and since she tested

positive for MSR, she remained off work until October 22, 2007. The claimant took shots for two days and then oral antibiotics.

Glenda Harding, a paraprofessional who worked in the classroom with the claimant, testified that she witnessed the claimant and the student scuffling for about three minutes. Ms. Harding testified that the day after the incident the claimant showed her stomach where the skin was torn. Ms. Harding further testified that their boss, Nancy Scott, told the staff to take precautions after a child announced that he had staph. Ms. Harding testified that management provided gloves, hand sanitizer, alcohol wipes, and Lysol after a known case of staph was reported.

Nancy Scott, Coordinator of Special Services for the respondent employer, testified that the October 3, 2007, incident was over by the time she got to the classroom. She was aware of the student head-butting the claimant but not aware of any abdomen abrasions immediately after the incident. Ms. Scott was aware of a student in the school with a staph infection; however, he had a medical release and was on antibiotics.

Ms. Scott testified that the rooms were professionally cleaned following the October 3, 2007, incident because of reports of staph infection. Ms. Scott testified that the school district has procedures for handling outbreaks of something contagious; however, the district did not make the staph infection wide known.

ADJUDICATION

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. 2005). 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 involved in a scuffling incident with a student where she had to place him on a mat to quiet him. She scuffled with the student for a short time before he was subdued following a head butt by the student. The claimant immediately reported the incident but did not seek any medical treatment that day. While showering the evening of the incident, the claimant testified she observed some abrasions on her abdomen, which she attributed to her jeans rubbing her skin during the scuffling incident. The first medical treatment sought was over the weekend on October 7, 2007, when she found the skin abrasions were now a boil or abscess. The October 7, 2007, medical report from Mission Clinical Express Care indicated "abscess rt. lower abd." (Cl. Exh. No. 1, p. 2.) The abscess was punctured and drained and an antibiotic was given. Testing revealed MRSA and the wound required daily care for a period of time. By October 10, 2007, the medical documentation reflected "abscess X 2" and both were drained and packed with medicine for several days. (Cl. Exh. No. 1, p. 5.) The claimant was released to return

to work on October 23, 2007.

In the present case, I find the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her abdomen. While I found the claimant to present a credible account of the incident and her problems, the medical evidence does not corroborate the claimant's account of abrasions. The claimant sought medical treatment on October 7, 2007 and was diagnosed with the MSRA infection. However, the medical evidence does not note any abrasions on the claimant's abdomen, the medical only notes the abscess and later notes abscess X2.

Certainly, the case law is clear that the claimant needs only to establish a causal link between the original injury and the subsequent complications for the injury to be compensable. See, *Bearden Lumber Co. v. Bond*, 7 Ark. App. 65, 644 S.W.2d 321 (1983). When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury. *McDonald Equip. Co. v. Turner*, 26 Ark. App. 264, 766 S.W.2d 936 (1989).

In the present case, the medical evidence simply does not provide that the claimant had abrasions on her abdomen whereby the infection could have entered. The medical simply identifies two boils or abscesses. The claimant also confirmed under cross examination that she had previously had boils/abscesses and infected hair follicles. I am constrained to find that the claimant has failed to prove a causal link between the school incident and the subsequent complications the claimant experienced with abscesses.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment and established by medical evidence. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE