

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F801359

NORA REED, Employee	CLAIMANT
CVM d/b/a MARVIN'S IGA, Employer	RESPONDENT
BENCHMARK INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED JUNE 24, 2008

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by WALTER MURRAY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 4, 2008, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on April 3, 2008, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties on September 18, 2007.
3. Respondents controvert this claim in its entirety.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's left upper thigh on September 18, 2007.
2. Medical.

The claimant contends that on September 18, 2007 her left upper thigh was injured

when she was bitten by a spider while stocking plants and flowers. She contends she is entitled to related medical as a result thereof.

The respondents contend the claimant did not have an injury arising out of this employment.

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 witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 3, 2008, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left upper thigh while working for respondent on September 18, 2007.
3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury; this includes her hospitalization.

FACTUAL BACKGROUND

_____The claimant began working for the respondent at two different stores in May 2005. At one store the claimant worked as a cake decorator. On Tuesdays of each week the claimant worked at another store at its floral design desk while the department manager was off. Claimant's job duties in the floral department included waiting on customers, ordering flowers, designing floral arrangements, and unloading flowers and plants from

cardboard boxes.

Claimant testified that on September 18, 2007 she arrived at work at the store in the floral department between 8:15 and 8:30. After opening the department she began unloading boxes of flowers. Claimant testified that between 9:00 and 10:00 that morning as she was washing and cleaning buckets at a sink she felt a bite on her left upper thigh area. Claimant testified that she had a skirt on and did not look at the area at that time because the bite was high up on her thigh. The area progressively itched and became irritated and as a result claimant went to the ladies room in order to look at the bite. Claimant testified that she washed the bite and put a cool rag on it.

Claimant testified that she did not report the injury that day because her supervisor was off and the only other managers present were men and she could not show the bite to them because of its location. Because the bite continued to be inflamed and irritated she called her family physician, Dr. Adkins, and made an appointment for the next day, September 19.

Before going to Dr. Adkins on September 19, claimant went to the store where she worked as a cake decorator and showed the bite to two female managers and informed them of her doctor's appointment. Claimant proceeded to see Dr. Adkins and was prescribed medication. After her appointment with Dr. Adkins claimant reported the results of her visit to the managers at the store where she primarily worked and also to the store where she worked one day each week in the floral department.

Claimant eventually returned to Dr. Adkins when her condition did not improve and she was hospitalized and treated with antibiotics. Dr. Adkins has opined that claimant was bitten by a brown recluse spider.

Claimant has filed this claim contending that she suffered a compensable injury to her left upper thigh on September 18, 2007 when she was bitten by a brown recluse spider. She seeks payment of medical benefits for that injury.

ADJUDICATION

_____ Claimant contends that she suffered a compensable injury when she was bitten by a brown recluse spider on September 18, 2007 while working in the respondent's floral department. Claimant's claim is for an injury caused by a specific incident identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury.

In reaching this decision, I note that the claimant did not specifically see the spider bite her and she did not see the spider crawl up her skirt; however, the Full Commission in a similar case, *Reeves v. Actronix*, Full Commission Opinion filed August 29, 2005 (Claim No. F205463), found that claimant had suffered a compensable injury. In *Reeves*, the claimant was sitting at her desk working when she felt something bite her on the leg. The claimant in that case testified that she just slapped her leg because something bit her and as in this case, the spider was never seen. Nevertheless, based upon the claimant's

testimony, medical evidence corroborating claimant's testimony, and objective findings indicating that claimant was bitten, the Commission found the case to be compensable.

Here, the claimant had been working for one to one and a half hours before she felt the bite on her left upper thigh. Claimant testified that after this bite it continued to itch and become irritated. As a result, she went to the ladies room, saw the bite, and put cold water on it. When her condition worsened she made an appointment to see her family physician, Dr. Adkins. Before claimant saw Dr. Adkins she did report the injury to two female managers and showed the bite to them.

The deposition was taken of claimant's treating physician, Dr. Johnny Adkins. Dr. Adkins testified that he could state within a reasonable degree of medical certainty that the claimant was bitten by a brown recluse spider. He also noted that a person bitten by a brown recluse spider would normally know within minutes that they had been bitten. Claimant testified that she believed the spider got on her while she was unboxing flowers and she also testified that it was not unusual to see a spider in the respondent's floral department.

Based upon the claimant's testimony which I find to be credible as well as the medical evidence, I find that claimant has met her burden of proving by a preponderance of the evidence that her injury arose out of and in the course of her employment and that it was caused by a specific incident identifiable by time and place of occurrence. Here, claimant testified that as she was working in the respondent's floral department she felt a bite on her upper thigh which subsequently became irritated and resulted in medical treatment and a hospitalization. It was the opinion of claimant's treating physician that she was bitten by a brown recluse spider.

I also find that claimant has met her burden of proving by a preponderance of the evidence that the injury caused internal or external physical harm to her body which required medical services and that she has offered medical evidence supported by

objective findings establishing an injury. Here, claimant was treated with antibiotics and subsequently hospitalized for the spider bite. At the time of claimant's initial visit with Dr. Adkins on September 19, 2007, he observed redness and swelling at the bite location. These constitute objective findings of an injury.

Accordingly, based upon the foregoing evidence, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left upper thigh while employed by respondent on September 18, 2007. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. This includes her hospitalization.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left upper thigh while employed by the respondent. Respondent is liable for payment of all reasonable and necessary medical treatment.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been

awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$234.00.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE