

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F205463

BONNIE REEVES,  
EMPLOYEE

CLAIMANT

ACTRONIX,  
EMPLOYER

RESPONDENT

LIBERTY MUTUAL INSURANCE CO.,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 29, 2005

Upon review before the FULL COMMISSION in Little Rock,  
Pulaski County, Arkansas.

Claimant represented by the HONORABLE FREDERICK SPENCER,  
Attorney at Law, Mountain Home, Arkansas.

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed January 18, 2005. The administrative law judge found that the claimant failed to prove she sustained "a compensable spider bite injury." After reviewing the entire record *de novo*, the Full Commission reverses the opinion of the administrative law judge. The Full Commission finds that the claimant proved she sustained a

compensable injury as the result of a spider bite occurring on April 24, 2002.

I. HISTORY

Bonnie Reeves, age 60, testified that she had worked for Actronix for 10 years. Ms. Reeves testified, "At work, we have multiple different kinds of spiders....You can talk to just about anybody at work and they will tell you, yes, we do have spiders....There's all kinds of spiders....You can see them crawling on the floor....Some are small, some are those big fuzzy things." The parties stipulated that the claimant asserted she sustained a specific injury on April 24, 2002. The claimant testified on cross-examination:

Q. And what is your job?

A. I do labels. I print the labels.

Q. Okay. Is that like on a computer?

A. Yes.

Q. Is that what you do most of the day, sit at the computer?

A. Uh-huh....

Q. And you were at this place when this incident occurred?

A. Right.

Q. Now, is it your testimony that you felt the spider bit (sic) you?

A. I felt something bite me. I looked at Roseanne and said, something just bit me, and I slapped my leg. And that's all I paid attention to because I didn't, never thought about it any more after that.

Q. Did you think about keeping this specimen or anything?

A. I didn't see anything. I just slapped my leg.

Q. So you don't know what happened?

A. I don't know what it was. I just slapped my leg because I felt something bite me. And I slapped my leg and said something bit me. Then I continued to do my job.

Tammy Sue Taylor testified that her job involved setting machines for Actronix employees. The claimant's attorney examined Ms. Taylor:

Q. And so, tell us, what do you know about the spider bite that she sustained when she was working for Actronix, when Bonnie was there on or around October, excuse me, April 24<sup>th</sup> of 2002?

A. I'm on the first aid team at work. Dispense band-aids, antibiotics, you know, take care if somebody falls, whatever. She came to me and said she'd been bitten. And -

Q. Did she indicate she'd just been bitten?

A. Yes....I gave her some Neosporin or triple antibiotic and a bandage.

Q. Did she tell you where she had been bitten?

A. She showed me.

Q. What did you see?

A. A red spot.

Q. Where was the red spot?

A. On her right thigh? (sic) ...

Q. Are you a close, close friend to this lady?

A. We bowl together. Yeah, we're friends, but I'm very happy working at Actronix. I've been there ten years this month.

Q. And would you lie for either party?

A. No, I would not.

Q. Either Actronix or her?

A. No.

The claimant sought medical treatment on April 29, 2002, at which time the claimant told the history of injury: "Was at work - felt bite Rt leg. Slapped at it - told co-worker." The Objective section of the medical form indicated, "4 mm pale area, medial Rt thigh" in addition to an "ecchymotic area." The assessment was "spider bite."

It was reported on April 30, 2002: "The patient comes in with a severe spider bite with severe cellulitis on the inner upper thigh on the right. She also has a streak going up to the groin that is red. She was seen in the emergency room and started on Benadryl and dapsone for her brown recluse bite. The center of the area looks a little necrotic but not horrible in comparison to the redness and the size of the redness which is about the size of a softball. It may be even bigger." The impression was, "Cellulitis, probably brown recluse bite."

A medical provider noted on May 3, 2002, "Felt bite on Rt thigh 04-24-02 c/o red blister swelling area on thigh since."

It was noted during a medical visit on May 8, 2002, "erythema 5 x 7 cm medial Rt. thigh."

The claimant presented to Dr. Kent P. Nachtigal on May 31, 2002:

Ms. Reeves is a very pleasant 57-year-old white female with a Brown Recluse bite to the right inner aspect of the right thigh about five weeks ago. This has developed a large ulcerated area about 2 x 2 cm with an area of fullness and induration. There is no secondary infection. Recommendation on this would be to proceed with wide local excision and primary closure.

On June 4, 2002, Dr. Nachtigal performed a "wide local excision with primary closure, brown recluse bite." Dr. Nachtigal's intraoperative findings were, "We ended up taking out an area about 4 inches in length and 2 inches in diameter on the right medial thigh. All the necrotic tissue is removed in the initial specimen." Dr. Nachtigal's pre-operative and post-operative diagnoses were, "Brown recluse spider bite with ulcer, right thigh."

Claimant's Exhibit 2 is material printed on July 22, 2002 from an internet site entitled "www.brownreclusespider.net." Claimant's Exhibit 2 also contains an article entitled "Spider Control," printed July 22, 2002 from an internet site, "www.e-bug.net." Claimant's Exhibit 2 contains an article entitled "Spider Bite, Brown Recluse" printed on July 22, 2002 from an internet site, "www.emedicine.com." Finally, Claimant's Exhibit No. 2 includes an article entitled, "The Recluse Spiders," from yet another internet site, "www.srv.net."

Dr. Nachtigal informed Dr. Richard L. Burnett on July 30, 2002, "Bonnie is two months out from excision of a spider bite and delayed primary closure. The wound looks

good, she is doing well. We have released her from our care and returned her to your care at this time."

Respondents' Exhibit One is an article entitled, "Brown Recluse Spider," printed on September 4, 2002 from a website apparently sponsored by the University of Kentucky Entomology Department.

Claimant's Exhibit One, pp. 2-11 and pp. 13-22, is a duplicate of the article entitled "Spider Control," printed on February 26, 2003 from the internet site "www.e-bug.net."

Dr. Kent Nachtigal signed the following on March 4, 2003:

This lady was a patient of mine. It is my opinion, stated within a reasonable degree of medical certainty, that the bite that she sustained on her inner right leg above the knee was from a brown recluse spider that she said bit her when she was working at Actronix, Inc. on April 24, 2002. The attached picture of a man's arm with a brown recluse bite is a reasonable and accurate picture and very similar to Bonnie's spider bite before her operation. I have looked at the picture and the ten pages from the internet attached to this statement and this picture from the internet most accurately describes Bonnie's brown recluse spider bite.

A pre-hearing order was filed on June 29, 2004. The claimant contended that she "sustained an injury to her right inner thigh on or about April 24, 2002, during the

course of and arising out of her employment with Actronix, Inc. At the time of the injury, claimant was working and was bitten by a brown recluse spider."

The parties stipulated that the respondents controverted the claim. The respondents contended, "The claimant was allegedly bitten by a spider. It is unknown where the spider came from and the claimant's work area is neat and well lighted. It is the respondent's position that the spider was either incorporated into the work place by the claimant or that the claimant received the bite somewhere other than work. Furthermore, a spider bite is not a risk of the claimant's employment and does not constitute an accidental injury."

The parties agreed to litigate the following issues:

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; and
5. Positional risk vs. increased risk as the legal standard on whether a spider bite arises out of the employment.

After a hearing, the administrative law judge found, "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 ... that she sustained a compensable spider bite injury." The ALJ therefore denied and dismissed the claim; claimant appeals to the Full Commission.

## II. ADJUDICATION

The claimant contends that she sustained a compensable injury as the result of a bite from a brown recluse spider on or about April 24, 2002. Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(A) (Repl. 2002), 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 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).

In the present matter, the Full Commission finds that the claimant proved she sustained a compensable injury on April 24, 2002. The claimant credibly testified that, while sitting at her desk and performing employment services on April 24, 2002, she felt something bite her on the leg. The claimant testified, "I just slapped my leg because I felt something bite me. And I slapped my leg and said something bit me. Then I continued to do my job." Tammy Sue Taylor, a co-worker, corroborated the claimant's testimony. Ms. Taylor testified that the claimant immediately informed her about the specific incident, and Ms. Taylor testified that she saw a red spot on the claimant's right thigh.

The medical records corroborated the claimant's testimony. It was noted on April 29, 2002 that the claimant "Was at work - felt bite Rt leg. Slapped at it - told co-worker." An "ecchymotic area" on the claimant's right thigh was objectively seen, and the claimant was assessed as having a "spider bite." More objective medical findings

were noted on April 30, 2002, at which time redness and a necrotic area on the claimant's right thigh was reported. "Erythema" was noted during a medical visit on May 8, 2002. On May 31, 2002, Dr. Nachtigal reported "a large ulcerated area about 2 x 2 cm with an area of fullness and induration." Dr. Nachtigal performed surgery on June 4, 2002, and his post-operative diagnosis was "Brown recluse spider bite with ulcer, right thigh."

The Full Commission finds that the claimant proved she sustained an accidental injury on April 24, 2002, causing physical harm to the body, and that the accidental injury arose out of and in the course of the claimant's employment with the respondents. The accidental injury on April 24, 2002, namely, the spider bite, was caused by a specific incident and was identifiable by time and place of occurrence. The claimant also established a compensable injury by medical evidence supported by objective findings. The Full Commission is aware of the various internet material submitted by the parties, but none of these articles are entitled to any probative weight in the present matter. Whether or not the claimant was bitten by a brown

recluse or some other arachnid, the preponderance of evidence indicates that the claimant was bitten on April 24, 2002, while performing employment services.

The Full Commission also notes that the parties agreed to litigate the issue, "positional risk vs. increased risk as the legal standard on whether a spider bite arises out of the employment." We are unable to locate any published cases by the Full Commission or Court of Appeals adjudicating this doctrine pursuant to the Act 796 statutory provisions defining an accidental injury. Moreover, since neither party briefs the Full Commission, we must conclude that the parties have abandoned this issue on appeal.

Based on our *de novo* review of the entire record, the Full Commission reverses the opinion of the administrative law judge. The Full Commission finds that the claimant proved she sustained a compensable injury as the result of a spider bite occurring on April 24, 2002. The claimant proved that all of the medical treatment of record she received was reasonably necessary in connection with the claimant's compensable injury, pursuant to Ark. Code Ann. §11-9-508(a). For prevailing on appeal to the Full

Commission, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (2) (Repl. 2002).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

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DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant sustained a compensable injury in the form of a brown recluse spider bite while acting in the course of her employment for the respondent employer.

In my opinion, the claimant has failed to meet her burden of proof. In my opinion, the majority has resorted to conjecture and speculation that the claimant sustained the spider bite while she was at work. 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). Arkansas Methodist Hospital v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993). In my opinion, just because the claimant worked at a place where she saw spiders and she testified that she rarely saw spiders at home, does not mean that the claimant was bitten by a brown recluse spider at her place of employment.

My review of the evidence persuades me that the claimant's bite by the brown recluse spider did not occur while she sat at her desk at work on April 24, 2002. There is no doubt that the claimant felt a sensation on her thigh as if she had just been bitten and she slapped at the spot in response. However, there was no dead spider as a result of that slap. Nor did the claimant see any spiders prior to or immediately after she felt what she perceived as a bite. I am not persuaded that a brown recluse fell onto or crawled into the claimant's pant leg while she sat at her desk, then crawled underneath the pants up to her thigh and bit her causing an immediate onset of symptoms. I note further, that

Ms. Taylor did not observe a dead spider when she put medicine on the claimant's leg shortly thereafter.

Simply put, I cannot find that the claimant sustained a compensable injury in the form of brown recluse spider bite in the course and scope of her employment. Therefore, I must respectfully dissent from the majority opinion.

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KAREN H. MCKINNEY, Commissioner