

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410983

DEBRA HILL,
EMPLOYEE

CLAIMANT

AREA AGENCY ON AGING,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MAY 10, 2006

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

Claimant represented by the HONORABLE MICHAEL HAMBY,
Attorney at Law, Greenwood, Arkansas.

Respondents represented by the HONORABLE CONSTANCE
CLARK, Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed September 30, 2005. In
said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The Arkansas Workers' compensation
Commission has jurisdiction of this claim.
2. On October 4, 2004, the relationship of
employee-employer-carrier existed between
the parties.
3. The claimant is entitled to a weekly
compensation rate of \$236.00 for temporary
total disability and \$177.00 for permanent

partial disability.

4. The claimant has failed to prove by a preponderance of the evidence that her left hand problems and problems with infection are related to her work for the respondent.

5. The claimant, therefore, is not entitled to her medical treatment or temporary total disability from October 5, 2004, to a date to be determined.

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore we affirm and adopt the September 30, 2005 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

The Majority is affirming and adopting an Administrative Law Judge's decision denying the claimant medical and disability benefits for what she contends was an occupational infection. Based upon my de novo review of the record, I find that the claimant met her burden of establishing that she contracted Methicillin Resistive Staphylococcus Aureus (MSRA) as a result of a job related exposure to that bacteria. Accordingly, I must respectfully dissent.

The claimant was employed by the respondent to provide in-home assistance to their clients. The

claimant testified that while providing such in-home assistance to Rosalie Townsend, she contracted MSRA. According to the claimant's testimony, one of her job duties was to assist Ms. Townsend in bathing. She stated that while bathing Ms. Townsend, she noticed the presence of several large sores which she described as boils. Even though the claimant stated she was wearing latex gloves while assisting Ms. Townsend bathing, she stated that water frequently got inside the gloves and contacted her skin.

The claimant testified that in early October 2004, she noticed a small bump or swelling on the ring finger of her left hand. She stated that when she awoke on the morning of October 5, 2004, the spot on her finger was red and very inflamed and her entire finger and hand was extremely swollen. Photographic evidence of this condition in the file confirms this to be correct. The claimant sought immediate medical treatment and was eventually diagnosed with MSRA. The claimant then underwent a significant period of treatment, including a debridement of the infected skin on her finger and was prescribed both oral and intravenous dosages of antibiotics. Initial treatment appeared to be successful and her symptoms had largely

disappeared by November 2004. However, in December 2004, the claimant began suffering from severe joint pain and it was found that the infection had returned and was present in her bloodstream. After further treatment, the claimant eventually recovered from this episode as well.

At the hearing, relatives of Ms. Townsend, the woman for whom the claimant was providing care, testified about Ms. Townsend's condition. Both of her sons stated that she did have boils on various parts of her body and that she had one on her nose for which she did receive some medical treatment. Ms. Townsend's condition worsened and she was hospitalized in January 2005, and died while there as a result of progressive kidney failure. However, prior to her death, a culture was taken from Ms. Townsend's nose and it was found that she had MSRA.

Four doctors' opinions were elicited in regard to the source of the claimant's condition. Two of the doctors, Dr. Stephen Hennigan, an internal medicine specialist in Fayetteville, Arkansas, and Dr. Lewis Bruton, a Fort Smith internist, were both of the opinion that the MSRA contracted by the claimant most likely came from a community exposure and not from Ms.

Townsend. In reviewing these opinions, I note that Dr. Hennigan never saw either the claimant or Ms. Townsend. His opinion was based solely on medical information provided to him by the respondent. I also note in his report of May 2, 2005, he stated as follows:

Ms. Townsend is a 75 year old woman who had end stage renal disease and was on peritoneal dialysis. She has had a recent bout of acute bacterial peritonitis secondary to enterococcus. There is no history documented in the records, which we have available, of methicillin resistant *Staphylococcal* infection, though this certainly would not be uncommon in a patient on dialysis.

Dr. Hennigan goes on to state that the infection site on the claimant was sensitive to various bacteria which he stated was not indicative of a infection from a health care setting. He cited a current epidemic of community acquired MRSA and stated that he suspected the claimant acquired her infection from the community.

Dr. Bruton, who had treated Ms. Townsend for her renal failure and was her treating physician at the time of her death, stated that he was not aware of any boils or other inflammation the claimant had which was caused by MSRA prior to her hospitalization. When shown Dr. Hennigan's report during his deposition, Dr. Bruton stated that he was not an infectious disease specialist and deferred to Dr. Hennigan's expertise. He also

stated that he agreed with Dr. Hennigan's conclusion that the claimant's MSRA would most likely have been contracted in the community at large. However, Dr. Bruton testified during his deposition that when Ms. Townsend was admitted into the hospital in January 2005, a culture was taken of her nasal sore and it was positive for MSRA. He also stated that it was possible for a person to be a carrier for this bacteria for a long period of time without any particular symptoms.

I find that the evidence provided by Dr. Bruton that the claimant had MSRA in January 2005, substantially undercuts Dr. Hennigan's opinion. In the above quoted portion of Dr. Hennigan's report, he specifically stated that the medical records he had been provided did not note that Ms. Townsend had MSRA. Since she did in fact have this infection, Dr. Hennigan's conclusion that the claimant most likely could not have contracted MSRA from her is now in question. For that reason, I cannot attach any great weight to his opinion. Likewise, the opinion of Dr. Bruton, who stated that he was not an infectious disease specialist and who was referring to Dr. Hennigan, cannot be relied upon as a basis for a factual finding.

I note that the other two physicians who actually treated the claimant for her MSRA infection were of the opinion that the source of her infection was Ms. Townsend. In his report of April 19, 2005, Dr. Stephen Hiem, a Fort Smith orthopedic surgeon who performed a debridement of the infectious tissue on the claimant's finger, that:

However, I cannot state with 100% certainty since--as you know--Methicillin Resistant Staph is becoming endemic in the community and is not necessarily relegated to nursing homes or debilitated patients. But I would feel that with the fact that this did appear on her hand as she was dealing with patients with Staph sores that I would feel comfortable in saying that the most likely reason for this lady to have developed this would be in dealing with these patients.

The record also contains a report from Dr. Janet Guyer, a family practice physician in Fort Smith, Arkansas. Dr. Guyer was the physician who initially diagnosed the claimant with MSRA and who oversaw application of the various antibiotics which the claimant was taking. After reviewing the prevalence of MSRA in the environment and the claimant's contact with Ms. Townsend, she stated: "It is my opinion that the chances of this being home related are minimal and that this being work related are quite high."

I find that the opinions of Drs. Hiem and Guyer are more persuasive than those relied upon by the Majority. Further, Ms. Townsend almost certainly had MSRA infections in her body at the time she was being bathed by the claimant. Testimony from the claimant and coworkers who performed the same tasks as she did conclusively establishes that Ms. Townsend had open sores on her body and that even though Ms. Hill and her coworkers wore gloves while bathing Ms. Townsend, some of the water which was in contact with Ms. Townsend's sores would get inside the gloves. Further, even in Dr. Hennigan's letter, he states that the claimant appeared to have been highly susceptible to an MSRA infection.

Given the above factors, I believe that the evidence is overwhelming that the claimant would have contracted MSRA from her contact with Ms. Townsend while she was acting in the course and scope of her employment. For that reason, I must respectfully dissent from the Majority's denial of this claim.

SHELBY W. TURNER, COMMISSIONER