

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F704113

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

**OPINION FILED JULY 31, 2008**

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

Claimant represented by HONORABLE J. MARK WHITE, Attorney at Law, Bryant, Arkansas.

Respondent represented by HONORABLE JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

**OPINION AND ORDER**

The claimant appeals from a decision of the Administrative Law Judge filed February 1, 2008.

The Administrative Law Judge entered the following 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.

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.

Thus, we affirm and adopt the 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 Hood dissents.

**DISSENTING OPINION**

The majority, by affirming and adopting the Administrative Law Judge, finds that 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. Based

on a de novo review of the record, I find that the majority has erred. The claimant has met his burden of proving by a preponderance of the evidence all of the elements of a compensable specific incident injury, therefore, I must respectfully dissent.

#### HISTORY

The claimant testified that on April 12, 2007, while loading apple-pallets into a trailer he felt something sting or bite him on the back of the leg. The claimant testified that he reached down and rubbed the affected area, but that he continued loading the pallets. The claimant testified that he finished loading, then continued on to the Arrowhead Truck Stop in Pendleton, Oregon. After resting, but before taking a shower, the claimant asked his wife to check his leg. The claimant's wife indicated that the claimant's leg was red. The claimant testified that over the next few days his leg started swelling. The claimant testified that when he returned to North Little Rock, on what he believes to be April 18<sup>th</sup>, he was told by the dispatcher, James Brooks, to go to the Emergency Room. The

claimant went to the emergency room and was treated with antibiotics and pain pills. The claimant's wound did not resolve and eventually required surgery.

#### DISCUSSION

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4) (A) (i) (Repl. 2002), must be established: (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 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 (4) (D), establishing the injury; and (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. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997). To prove compensability, a claimant is not

required to identify the precise time and date of the injury; rather, the claimant must show only that the occurrence of the injury is capable of being identified. Edens v. Superior Marble & Glass, 346 Ark. 487, 58 S.W.3d 369 (2001).

The majority, by affirming and adopting the Administrative Law Judge, has erroneously denied this claim because the claimant failed to prove "that he sustained a sting or bite to his leg by a spider or insect." I find that it is not the claimant's burden to specifically prove that he was stung or bitten by an insect; the claimant need only to prove that he has sustained an injury in the course and scope of his employment, regardless of whether an insect caused his injury. Since the claimant does not know the immediate cause of his injury, his injury is most properly classified as an "unexplained" injury.

The Courts have long held that when an injury is sustained in the course and scope of employment, the injury may be compensable, even if the immediate cause of the injury is unknown. See, Moore v. Darling Store Fixtures, 22

Ark. App. 21, 732 S.W.2d 496 (1987). The most common such "unexplained" injury is a fall - in the Moore case, for example, the claimant fell while at work. He did not remember the cause of the fall, nor were there any witnesses to the fall. Even though it could not be determined what caused the claimant in Moore to fall, the Court, nonetheless, held it was error for the Commission to deny compensation. Id.

Here, the claimant candidly admitted he does not know with any certainty what caused the stinging/biting sensation he felt. For the majority to deny this claim because the claimant cannot prove he was stung or bitten by a particular insect is akin to the Commission's requiring the claimant in Moore to prove that his fall was instituted by a work-related cause. Like the claimant in Moore, the present claimant need not prove the immediate, actual cause of his injury - it is sufficient that whatever the cause, his injury began in the course and scope of his employment. The claimant's credible testimony of record establishes

such, and there is no evidence of record to provide any other causal explanation.

The majority, by affirming and adopting the Administrative Law Judge, discounts this causal relationship by linking an unrelated condition in the claimant's elbow to his compensable leg injury. This assumed link between the leg and the elbow is nothing more than speculation and conjecture, which, which, 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). Furthermore, the majority's speculative assumption of a link between the elbow condition and the leg wound is unsupported by the evidence of record. The elbow condition exhibited different objective findings than the leg injury; the elbow condition required different (and substantially less serious) treatment than the leg injury; and the leg wound originated with a specific incident, while no such incident occurred in connection with the elbow condition. Given these facts, any

conclusion that the leg injury and elbow condition were related can be reached only by speculation.

Furthermore, the majority, by affirming and adopting the Administrative Law Judge, finds the testimony of the claimant and his wife to not be credible. I disagree. The claimant and his wife credibly testified as to the specific bite/sting incident that occurred on April 12. The claimant specifically testified that it was on April 15 when the problems were first severe enough to interfere with his driving. While it is true that the hospital records do not mention the bite/sting incident described by the claimant, the Arkansas Workers' Compensation Act does not require an immediate diagnosis, and it does not require that the claimant insist that the doctor's history contain the gory details of the occurrence. See Siders v. Southern Mattress Co., 240 Ark. 267, 398 S.W.2d 901 (1966). However, the medical records clearly show that the claimant or his wife informed Dr. Shaw of the incident during the hospital stay, because Dr. Shaw specifically mentioned it in correspondence dated May 2, five days *before* the initial follow-up visit

scheduled after the claimant's hospitalization. Dr. Shaw could have known of the bite/sting incident when he wrote the letter on May 2, only if the claimant or his wife had mentioned it during the hospitalization. Since there is no evidence the claimant saw Dr. Shaw between his release from the hospital and Dr. Shaw's authoring his letter on May 2, it would take speculation and conjecture to conclude otherwise.

In this regard, it must be noted that Dr. Shaw has repeatedly opined that the necrotizing fasciitis arose from the bite/sting incident of April 12. The majority, by affirming and adopting the Administrative Law Judge, dismisses Dr. Shaw's opinion as "based on an inaccurate history", yet the Administrative Law Judge failed to identify what, specifically, was inaccurate about the history provided by the claimant. While the Commission has the authority to resolve conflicting evidence, including medical testimony, Foxx v. American Transp., 54 Ark. App. 115, 924 S.W.2d 814 (1996), the Commission may not arbitrarily disregard medical evidence or the testimony of

any witness. Coleman v. Pro-transportation, \_\_\_\_ Ark. App. \_\_\_\_, \_\_\_\_ S.W.2d \_\_\_\_, (2007). As shown above, the history recorded in Dr. Shaw's correspondence is consistent with the testimony of the claimant, the testimony of his wife, and the documentary evidence of record.

In conclusion, I find that the claimant sustained a compensable injury on or about April 12, 2007 and is entitled reasonably necessary medical treatment and temporary total disability benefits from April 18 through June 1, 2007. Furthermore, although not specifically addressed by the majority, pursuant to the precedent of Southern Hospitalities v. Britain, 54 Ark. App. 318, 925 S.W.2d 810 (1996), I agree with the claimant's assertion that the respondents are estopped from denying liability for the April 18 and April 20, 2007, hospitalizations, regardless of the majority's compensability determination.

For the aforementioned reasons I must respectfully dissent.

---

PHILIP A. HOOD, Commissioner