

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607555

MR. JIMMY WATSON HUSBAND OF MRS. DONNIE WATSON (DECEASED), EMPLOYEE	CLAIMANT
ARKANSAS COTTON GROWERS ORGANIZATION, INC., EMPLOYER	RESPONDENT NO. 1
AG-COMP SIF CLAIMS, CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED OCTOBER 9, 2008

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

Claimant represented by HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondent No. 1 represented by HONORABLE BETTY HARDY, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 excused from attending the hearing.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed June 17, 2008.

The Administrative Law Judge entered the following findings:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim in which the relationship of employer-employee-carrier existed on July 27, 2005.
2. The claimant has failed to prove that the deceased's heart condition was causally related to a tick bite.
3. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.

The claimant alleges that his deceased wife 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

I must respectfully dissent from the majority opinion denying the compensability of this claim. From a de novo review of the record, I find that the claimant proved, by a preponderance of the evidence, that his wife's death from heart failure was causally related to Rocky Mountain Spotted Tick Fever, which was the direct result of a work-

related tick bite and, therefore, a compensable death claim for which benefits should have been awarded.

The opinion of the Administrative Law Judge was affirmed and adopted in its entirety by the majority without additional discussion. Therefore, the opinion of the Administrative Law Judge and all of the findings and conclusions contained in that decision are now the majority opinion. ITT/Higbie v. Gilliam, 34 Ark. App. 154, 807 S.W.2d 44 (1991).

Ms. Donnie Watson worked for the Arkansas Cotton Growers Association in the boll weevil eradication program as a field unit supervisor. Her job involved checking boll weevil traps at local farms. In July of 2005, Ms. Watson found a tick on her inner thigh. Her husband observed reddened skin and, shortly thereafter, she became ill and sought medical treatment. Her initial treating physician was Dr. Jay Connelley, who diagnosed Rocky Mountain Spotted Tick Fever related to the tick bite. Further, as a result of this infection, it was determined that she had developed heart problems. Ms. Watson was sent to a cardiologist, Dr.

Scott Davis, who discovered that she was suffering from nonischemic cardiomyopathy (infection of the heart muscle). It was Dr. Davis' opinion that Ms. Watson's heart condition was caused from her heart muscle being infected by rickettsia rickettsiae (the bacteria causing Rocky Mountain Spotted Tick Fever). Dr. Davis referred Ms. Watson to Dr. Susan Delap, infectious disease specialist, for additional testing and evaluation of the Rocky Mountain Spotted Tick Fever. On February 9, 2006, she died as a result of her heart problems. Ms. Watson's husband made claim for death benefits, which was denied by the respondents.

Prior the hearing, respondents obtained opinions from Dr. William Greenman, an internist with a specialty in infectious diseases from Lexington, Kentucky, and Dr. Sander van Cleeff, a cardiologist from Charlotte, North Carolina. These doctors did not perform examinations, but offered opinions based on review of medical records only.

All five physicians, mentioned above, provided deposition testimony which was made a part of the record. A review of each deposition follows.

Ms. Watson's initial treating physician was Dr. Jay Connelley, a family practice specialist. Dr. Connelley testified that he first saw Ms. Watson on two occasions before the tick bite on March 29, 2005 and April 28, 2005 for the flu and bronchitis. Subsequent to the date of the tick bite, she was seen again on August 18, 2005 for asthma. On September 29, 2005, Ms. Watson presented with new symptoms of fatigue which caused Dr. Connelley to order blood tests with an outside laboratory. He discovered that Ms. Watson was suffering from Rocky Mountain Spotted Tick Fever when lab results were reviewed on October 10, 2005. Dr. Connelley said that the symptoms Ms. Watson was experiencing before the date of the tick bite were not consistent with Rocky Mountain Spotted Fever and that the first symptoms which were consistent with the disease appeared in September of 2005. Dr. Connelley discovered that the disease had resulted in heart failure, so he

referred Ms. Watson to Dr. Scott Davis, cardiologist, for treatment of that condition. During his deposition, Dr. Connelley was shown a copy of a report from Dr. Davis dated June 29, 2006 and asked whether he agreed with his assessment. Dr. Connelley agreed with the report, which stated:

Ms. Donnie Watson was a patient of mine. Her clinical sequence of events involved developing a positive titer for Rocky Mountain spotted fever and subsequently a nonischemic cardiomyopathy. Most commonly, a viral process causes a nonischemic cardiomyopathy. However, in this clinical setting with a positive serology for Rocky Mountain spotted fever, this would be considered the most likely culprit.

* * * * *

As to her overall heart condition, it is within a reasonable degree of medical certainty that her cardiovascular status and specifically her nonischemic cardiomyopathy and subsequent death were related to the associated diagnosis of Rocky Mountain spotted tick fever.

The deposition of Ms. Watson's primary treating physician, Dr. Scott Davis, revealed that he is board certified in internal medicine, general cardiology, and interventional cardiology. He testified that he began treating Ms. Watson on referral from Dr. Connelley because she was suffering from heart failure. After extensive testing, Dr. Davis concluded that Ms. Watson was afflicted with nonischemic cardiomyopathy caused by an infection as opposed to coronary artery disease. He said that rickettsia rickettsiae is the organism which causes Rocky Mountain Spotted Fever and that this particular infection is known to cause nonischemic cardiomyopathy. Dr. Davis reiterated his opinion, previously stated in his medical report of June 29, 2006, that Ms. Watson's heart condition and subsequent death were caused by Rocky Mountain Spotted Tick Fever, within a reasonable degree of medical certainty. He acknowledged that there were other causes of this heart condition such as drugs from chemotherapy. When questioned about some chemotherapy Ms. Watson had in 1997, Dr. Davis indicated that drugs taken in 1997 would have caused symptoms long

before the current episode if they had been responsible for the problem.

In her deposition, Dr. Susan K. Delap testified that she was board certified in internal medicine and infectious disease. She evaluated Ms. Watson on one occasion on referral from Dr. Davis to see if there was some explanation for the heart problems that could be offered from an infectious standpoint. She confirmed that Rocky Mountain Spotted Fever is a known cause of nonischemic cardiomyopathy and that this heart condition was the cause of Ms. Watson's Death. It was Dr. Delap's position that no conclusions could be drawn from the previous lab studies because they were "very close together" and that "there really hadn't been enough time for the immunology to evolve". She said that, based on the laboratory data that she was able to obtain, she could not relate the cardiomyopathy to the Rocky Mountain Spotted Fever. Because of the limited laboratory data, Dr. Delap could not say whether or not the disease was active when she saw Ms. Watson nor could she determine whether the disease had

peaked at the time of her examination. All Dr. Delap could say was that Ms. Watson had been exposed, at sometime since childhood, to multiple viruses and also to Rocky Mountain Spotted Fever. From the laboratory data she had available, Dr. Delap said that one could not determine at what time Ms. Watson had been exposed to the disease. She said that it varied greatly with individuals as to how long it took to develop symptoms after the disease was contacted and how long the disease would last after contact. She also said that the symptoms resulting from the disease can vary greatly but might include "malaise, fatigue and a general run-down feeling". With regard to the presence of a rash, she testified that the classic rash would appear on the palms, wrists, and ankles but the rash can be "a different type rash in every individual" and that these rashes "can be very diverse". Dr. Delap summed up her opinion, as follows:

Q. ... Would doctor Davis be in a better position than you to have made this conclusion, do you think?

A. Doctor Davis is in a better position than myself to comment on non-ischemic dilated cardiomyopathy. I don't know Doctor Davis, and I don't know his thinking in saying that this was related to Rocky Mountain Spotted Fever. So I really can't tell you if he's better equipped than I am or not.

Q. Would you defer to his conclusion?

A. I would defer by the fact that I don't know what his thinking was in saying this. He may have more data than I. He may have had a personal conversation with Doctor Connelley, who has more data. All I can say is that based on the information I have here in front of me at this point in time, I just don't know. (emphasis added)

Dr. William C. Greenman testified that he practices in the fields of internal medicine and infectious diseases and was board certified in internal medicine but not in infectious diseases. He testified that he lives in Kentucky and he was hired by the respondents to review some records and formulate an opinion. Dr. Greenman testified

that he did not remember what records he reviewed, but that whatever those records might have been indicated to him that it was highly unlikely that Ms. Watson's heart problems would be attributed to Rocky Mountain Spotted Fever and a tick bite. In direct conflict with the testimony of Dr. Delap indicating that no conclusions could be drawn from the limited laboratory data, Dr. Greenman drew a number of conclusions from the laboratory results. He concluded that Ms. Watson's exposure to Rocky Mountain Spotted Fever occurred at least one year before she was tested because the initial titers were weakly positive, indicating remote exposure. He opined that Ms. Watson had a recent exposure to Coxsackie virus Type B because her titers were moderate to high in November 2005. However, he testified that he could not say how recently she had been exposed because she would have to be tested more than once and from three to six months apart. Coxsackie virus is a common virus to which virtually everyone is exposed, frequently from a common cold. He admitted that Rocky Mountain Spotted Fever was a known cause of Ms. Watson's heart condition. Dr. Greenman

acknowledged that general malaise and rash were symptoms of Rocky Mountain Spotted Fever, but disputed that a rash on the thigh and shortness of breath were characteristic of the disease.

The deposition of Dr. Sander van Cleeff, a cardiologist in Charlotte, North Carolina, revealed that he was hired by the respondents to review records and state his opinions on the causal relationship issues which have been raised in this case. He testified that, after reviewing the records, that he could not say what caused Ms. Watson's heart condition which ultimately resulted in her death. He testified that it was not his job, as a cardiologist, to determine what caused the heart condition and that it was only his job to treat the condition. Dr. van Cleeff testified that he had never seen a case of Rocky Mountain Spotted Fever. On the question of whether Ms. Watson's heart condition was related to Rocky Mountain Spotted Fever, he professed little expertise in this area and deferred to the infectious disease specialists on this issue.

In summary, all of the doctors agree that the claimant had Rocky Mountain Spotted Tick Fever, that this disease is a known cause of nonischemic cardiomyopathy, and that Ms. Watson suffered from nonischemic cardiomyopathy which caused her death. It is also not disputed that Ms. Watson suffered a work-related tick bite shortly before being diagnosed with Rocky Mountain Spotted Tick Fever. Ms. Watson's treating physicians, Drs. Connelley and Davis, opined that it was the infection which developed from the tick bite that caused the heart condition which resulted in her death. Dr. Delap, the infectious disease specialist, said that the laboratory studies could not confirm nor deny the above-stated causal relationships because they were not conducted over a sufficient period of time. She deferred to the opinions of Drs. Connelley and Davis on the causation issues, because they had more information available to them. Without the benefit of a physical exam and relying only on the laboratory studies, Dr. Greenman, another infectious disease specialist, was paid to provide an opinion for the respondents. He drew a number of conclusions from the

laboratory data, refuting the causal relationship between the Rocky Mountain Spotted Fever and Ms. Watson's heart condition, conclusions which Dr. Delap said could not be derived from the limited information available from the laboratories. And finally, the second doctor who provided an opinion for the respondents without an examination, Dr. van Cleeff, testified that he was not in a position to state an opinion on the causation issue and deferred to the infectious disease specialists.

Based on the above, it is obvious that the weight of the credible medical evidence of record established that Ms. Watson's death was causally related to the tick bite she suffered during the course of her employment duties and that her husband's claim for death benefits should have been approved. Therefore, I must respectfully dissent from the majority opinion.

PHILIP A. HOOD, Commissioner