

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F900725

LISA CLARK, EMPLOYEE	CLAIMANT
WEINER SCHOOL DISTRICT, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 16, 2009

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

Claimant appeared *pro se*.

Respondent represented by HONORABLE GUY ALTON WADE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

Respondents appeal from the decision of the Administrative Law Judge finding that the claimant sustained an occupational disease in the form of a MRSA staph infection while working for respondent employer. Based upon our de novo review of the entire record, without giving the benefit of the doubt to either party, we find that the claimant has failed to meet her burden of proof. Therefore, we find that the decision of the Administrative Law Judge must be reversed.

The claimant was employed by respondents as a

paraprofessional in the Special Education Department and worked as a teacher's aide under the supervision of a classroom teacher. Claimant described her duties as assisting many children with special needs, including but not limited to changing pull-ups to instructional help. Claimant contends that in caring for a child with autism she contracted the MRSA virus and developed a staph infection. It is this staph infection that is the subject of this claim.

Claimant contends that she developed a staff infection from bandaging an open wound on Nicholas, an autistic child, on or around January 9, 2009. Claimant described the procedures she learned through training at Crowley's Ridge as "just wearing gloves and wash your hands daily." When she bandaged the alleged sore on Nicholas, the claimant testified that she followed these procedures. Specifically with regard to this alleged incident, the claimant testified:

A. He -- well, he came in on various occasions with -- with open sores and, of course, you know, he was -- we had to potty train as well. And so he -- well, he had one -- a particular one on his arm and we addressed that with his mother and she said, yeah, --

MR. WADE: I'm going to object to what the mother said, Your Honor. It's hearsay.

THE COURT: Very well. I'll note your objection. I'll allow the witness to respond. Continue ma'am.

A. (Witness continuing:) And I looked at it and got my -- she showed it to me and I got my gloves on and got some ointment and put it on a Q-tip and -- and, you know, and put it on the sore and put a Band-aid on it.

The claimant testified that she wore gloves when she dressed the open wound and that she washed her hands thoroughly, but because she was wearing a ring that day, she is assuming that she did not wash the ring well enough. In this regard, the claimant testified as to how she believes she contracted the staph infection. "...I didn't wash the ring well enough because I scratched my leg with it, and I think that's how the staph got on my leg." However, when questioned further about scratching her leg, the claimant admitted that she does not recall how she cut her leg, that she did not notice a cut until after she developed the staph infection. The claimant reported a sore on her leg, in the crease between her bottom and her thigh and she was sent by the respondents to Dr. Gillam. Records from her office visit with Dr. Gillam were not introduced into evidence. However, the front page of an AR-3 physician's report indicates that the claimant was seen on January 14, 2009 for

a spot on her bottom. No culture was taken; however the claimant was diagnosed with MRSA and provided medical treatment. Claimant sought treatment from the emergency room the following week when she developed tiredness which she associated with this infection. Respondents controverted this additional medical treatment.

An "occupational disease" is any disease resulting in disability or death that arises out of and in the course of the occupation or employment of the employee or naturally follows or unavoidably results from an injury. Ark. Code Ann. § 11-9-601(e) (1) (A) (Repl. 2002). An occupational disease is characteristic of an occupation, process or employment where there is a recognizable link between the nature of the job performed and an increased risk in contracting the occupational disease in question. Sanyo Mfg. Corp. v. Leisure, 12 Ark. App. 274, 675 S.W.2d 841 (1984). A causal connection between the occupation or employment and the occupational disease must be established by a preponderance of the evidence Ark. Code Ann. §11-9-601(e) (1) (B).

Ordinary diseases of life to which the general public is exposed are not compensable. Ark. Code Ann. § 11-

9-601(e)(3) (Repl. 2002). Moreover, the occupational disease must be "due to the nature of an employment in which the hazards of the disease actually exist and are characteristic thereof and peculiar to the trade, occupation, process, or employment and is actually incurred in his employment." Ark. Code Ann. § 11-9-601(g)(1)(A) (Repl. 2002). An occupational hazard is quite different from occupational diseases defined in §11-9-601.

A disease may be considered compensable, although the general public may contract the disease, if the nature of the employment exposes the worker to a greater risk of the disease than the risk experienced by the general public or workers in other employments. Osmose Wood Preserving v. Jones, 40 Ark. App. 190, 843 S.W.2d 875 (1992); Sanyo, supra. Further, to constitute an occupational disease, there must be a recognizable link between the nature of the job and an increased risk in contracting the disease. Sanyo, supra.

Nicholas's mother, Mrs. Rona Hatcher, testified on behalf of the claimant. Mrs. Hatcher brought Nicholas's medical records to the hearing and they were introduced over respondent's objection. Mrs. Hatcher specifically testified

that Nicholas did not come to school in January 2009 with an open sore on his arm. The only incident with regard to an open sore, according to Mrs. Hatcher, occurred in December of 2008. In this regard, Mrs. Hatcher testified:

THE COURT: Let me ask you this, ma'am. Was there a point in time in January of 2009 when your son arrive at school with a sore on his arm?

THE WITNESS: No.

THE COURT: You don't recall any --

THE WITNESS: Not on that date.

THE COURT: In January of '09, there was no such incident of that?

THE WITNESS: No.

THE COURT: Okay.

BY MS. CLARK:

Q. Did he not come with a sore on his arm and I took my gloves and got a Q-tip and put the bacterial on him and the Band-aid?

A. Right.

THE COURT: Do you know when that was?

THE WITNESS: Well, it seemed like it was around the first of December and I brought him in and they were going to feed him, and I said I want you to see, because Nicholas has a bad immune system, and he's sick a lot. So anytime he gets something, I watch it.

THE COURT: Okay.

THE WITNESS: So I said there's a spot here, but it turned out to be -- it may have been a mosquito bite. I mean, it was -- it went away in a couple of days. We didn't have to go to the doctor for that one.

THE COURT: Okay.

THE WITNESS: That was sometime in December.

THE COURT: Of 2008?

THE WITNESS: Of 2008.

THE COURT: And is that that incidence where Ms. Clark did just as she described, the glove --

THE WITNESS: She took very good care of him.

THE COURT: -- the Q-tip and placed something on the wound there?

THE WITNESS: Uh-huh.

THE COURT: Okay.

Mrs. Hatcher did describe a previous incident when Nicholas had a spot on his bottom in October of 2008 when she had to take him to the doctor. Nicholas was placed on antibiotics and given Bactroban ointment at that time.

When asked on cross-examination, Mrs. Hatcher testified that if Nicholas had any open sores in January of 2009, she would have taken him to the doctor to determine

what the sore was and for treatment.

Claimant's supervising teacher, Marie Ray, also testified on behalf of the claimant. Mrs. Ray testified that she and the claimant are very careful about the way they wash their hands and keeping the room clean. Mrs. Ray confirmed Mrs. Hatcher's testimony that Nicholas came to school in the fall and his mother told them about a sore on his bottom that had been treated by a doctor and bandaged. Mrs. Ray further confirmed that this sore was healed by the end of the week. When asked on cross-examination whether Nicholas had a spot on his arm in January of 2009, Mrs. Ray stated: "Not that I can recall." Mrs. Ray further confirmed Mrs. Hatcher's testimony that Nicholas had a spot on his arm in December, before Christmas.

The claimant testified that there is no doubt in her mind that she contracted a staph infection from work. Specifically, the claimant's testified: "I've been doing this for seven years and there's --I've never gotten anything like this before, so, yes. I'm -- I'm really thorough. I clean my hand. I wash my hands a hundred times a day." However, no matter how sincere a claimant's beliefs are that a medical problem is related to a compensable

injury, such belief is not sufficient to meet the claimant's burden of proof. Killenberger v. Big D Liquor, Full Commission Opinion August 29, 1995 (E408248 & E408249).

The overwhelming weight of the evidence fails to corroborate the claimant's testimony that Nicholas had an open sore in January of 2009. Nicholas's mother specifically testified that Nicholas did not have any open sores in January. This was confirmed by Mrs. Ray, claimant's supervising teacher. Nicholas's mother was diligent in caring for her son due to his weak immune system. She testified that when Nicholas had an open sore, she would obtain medical treatment. The last such treatment was in October of 2008 for a sore on Nicholas's bottom. Nicholas was not treated in January of 2009 for any open sores. Accordingly, we cannot find that the claimant has proven by a preponderance of the evidence that she came in contact with MRSA from caring for Nicholas on January 8, 2009.

Moreover, with regard to a spot on Nicholas's arm, both Nicholas's mother and Mrs. Ray testified that it was a minor red spot on his arm that occurred in December, before Christmas. Neither described it as an open wound. In fact,

Nicholas's mother believed that it may have been a mosquito bite, but she wanted his teachers to be aware of it.

According to Nicholas's mother, it was this mosquito bite that she recalls the claimant bandaging. Thus, there is insufficient evidence to rise to a preponderance of the evidence to find that the spot the claimant bandaged in December of 2008 was the source of the claimant's staph infection.

Even giving the claimant the benefit of the doubt, which we are statutorily prohibited from doing, and assuming that Nicholas had an open wound in January of 2009, the claimant contends that she transferred the MRSA virus from her ring, which she said she washed to the crease between her bottom and her thigh by scratching herself with the ring as she was straightening her dress. However, the claimant does not recall actually scratching herself with her ring through her dress. This is merely an assumption the claimant has made in trying to connect the MRSA virus to her employment. If the claimant were able to transfer the virus from her ring to her bottom by scratching herself while smoothing her dress she would have had to actually tear the dress. However, the claimant does not recall ever actually

scratching herself. It simply is not logical for the virus to have transferred from her ring to her bottom in the manner proposed by the claimant.

Finally, when the claimant's testimony is carefully considered it is evident that she followed proper procedures. She did not touch the open sore but merely used a Q-tip to place ointment on it. She wore gloves when placing the bandage on the student and properly disposed of the gloves. She thoroughly washed her hand, although she believes that she may not have thoroughly washed her ring. Nevertheless, the claimant described the proper hand washing procedure to including washing between each finger and singing a little song to ensure that she washed her hands for the required amount of time. Nowhere in this description of events is there any physical contact between the claimant and the allegedly infected child. The claimant merely assumes that she must have poked a hole in the gloves with her ring, but she offered no evidence that the gloves she was wearing were in any way defective or broken when she disposed of them. Even assuming that the claimant came in contact with an open sore on Nicholas in January 2009, a finding we specifically do not make, given that she followed

proper procedures and did not come in physical contact with the sore, that she does not remember actually scratching herself, nor is there any evidence that she tore or poked a hole in her dress with her ring, we find it impossible to conclude based on the evidence before the Commission that the claimant sustained a compensable disease which arose out of her employment.

Therefore, for those reasons stated herein, we find that the decision of the Administrative Law Judge must be reversed, and this claim for benefits, denied and dismissed.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. I find, as did the Administrative Law Judge, that

the claimant sustained a compensable MRSA infection while working for the respondent employer. The claimant worked for the respondent as a paraprofessional, assisting with the care of special needs children. The claimant received training in performing her job duties to include wearing gloves, thoroughly washing her hands, and wound care. The claimant testified that she wore a ring and, after removing her gloves to wash her hands, she also kept her ring on and washed it, as well. Despite her precautions, the claimant scratched her upper leg with her ring and developed a MRSA infection.

Ark. Code Ann . §11-9-601 (Repl. 2002) provides:

(e) (1) (A) "Occupational disease", as used in this chapter, unless the context otherwise requires, means any disease that results in disability or death and arises out of and in the course of the occupation or employment of the employee or naturally follows or unavoidably results from an injury as that term is defined in this chapter.

(B) However, a causal connection between the occupation or employment and the occupational disease must be established by a preponderance of the evidence.

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(2) No compensation shall be payable for any contagious or infectious disease unless contracted in the course of employment in or immediate connection with a hospital or sanatorium in which persons suffering from that disease are cared for or treated.

(3) No compensation shall be payable for any ordinary disease of life to which the general public is exposed . .
. .

(g) (1) An employer shall not be liable for any compensation for an occupational disease unless:

(A) The disease is due to the nature of an employment in which the hazards of the disease actually exist and are characteristic thereof and peculiar to the trade, occupation, process, or employment and is actually incurred in his or her employment . . .

The test of compensability of an occupational disease is whether the nature of employment exposes the worker to a greater risk of the disease than the risk experienced by the general public or workers in other employment. The fact that the general public may contract a disease is not controlling. Osmose Wood Preserving v. Jones, 40 Ark. App. 190, 843 S.W.2d 875 (1992). Further, an

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occupational disease is characteristic of an occupation, process or employment where there is a recognizable link between the nature of the job performed and an increased risk in contracting the occupational disease in question. Sanyo Manufacturing Corporation v. Leisure, 12 Ark. App. 274, 675 S.W.2d 841 (1984).

Here, the claimant's job duties required her to assist and aid special needs students with bathroom care and other matters. The evidence of record shows that at times students in claimant's care presented with open wounds. More often than not, the claimant and the classroom teacher were alerted to the presence of open wounds by a parent. There is credible evidence in the record to reflect that one of the students presented in December 2008, with an open wound on his arm. As noted above, the evidence reflects that other students under the claimant's charge also, on occasions, presented with open wounds and/or sores. One of the students under the claimant's charge had a culture for a healing sore in October 2007, which disclosed MRSA.

On or about January 13, 2009, claimant notified appropriate supervisory personnel of respondent of an area on her upper thigh/buttock area which was sore and appeared to be infected. The claimant was directed to respondent's

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designated medical provider on January 14, 2008, who assessed the complaint as MRSA and provided medication.

The claimant subsequently received medical treatment at the emergency department of St. Bernard's Medical Center, and later from her primary care physician, Dr. Craig Daniels, who provided prescription medication to address the diagnosed MRSA.

I find that the preponderance of the evidence of record shows that the claimant has contact with students in the classroom setting with open sores and wounds. I find that the claimant has proved that MRSA is present in her work environment. Therefore, pursuant to Ark. Code Ann §11-9-601 I find that MRSA infections are peculiar to the claimant's occupation and that her minor ring scratch would not have developed a MRSA infection had she not been exposed to MRSA in the course of her employment with the respondent.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner