

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G004153

KATHY FRANK, EMPLOYEE	CLAIMANT
TEC EMPLOYMENT COMPANY, EMPLOYER	RESPONDENT
LIBERTY MUTUAL INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED APRIL 21, 2011

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

Claimant represented by the HONORABLE ANDREW HATFIELD, Attorney at Law, Rogers, Arkansas.

Respondents represented by the HONORABLE JAMES ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed December 27, 2010.

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 May 3, 2010, the relationship of employee-employer-carrier existed between the parties.

3. On May 3, 2010, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$173.00 for total disability and \$154.00 for permanent partial disability.
4. On May 3, 2010, the claimant sustained a compensable injury, in the form of a brown recluse spider bite. This compensable injury caused a compensable consequence, in the form of a large necrotic ulceration on her left lower back or hip and hemolytic anemia. Specifically, the claimant has established the actual existence of these physical injuries or conditions by medical evidence, which is supported by "objective findings". Further, the claimant has proven by the greater weight of the credible evidence that these physical injuries or conditions arose out of and occurred in the course of her employment, were caused by a specific incident, are identifiable by time and place of occurrence, caused both internal and external physical harm to her body, required medical services, and resulted in disability (at least, temporarily).
5. The medical services rendered to the claimant for the necrotic ulceration of her left lower back and hip by personnel and physicians at the emergency room of Mercy Medical Health Center on May 3, 2010, represents reasonably necessary medical services for the claimant's compensable injury. The medical services rendered to the claimant for the necrotic ulceration to her left lower back or hip and her hemolytic anemia by and at the direction of medical personnel and physicians at the Mercy Medical Health Center from May 12, 2010 through May 18, 2010, also represents reasonably necessary medical services for the claimant's compensable injury. Finally, the medical services rendered to the claimant by and at the

direction of Dr. Douglas Treptow (for necrotic ulceration to her left low back or hip) and by at (sic) the direction of Dr. Eric Schaefer (for her hemolytic anemia), after May 18, 2010, also represents reasonably necessary medical services for the claimant's compensable injury and its resulting consequences. Specifically, the claimant has proven by the greater weight of the medical evidence that all of these medical services were necessitated by or connected with her compensable injury and had a reasonable expectation of returning the claimant to more near her preinjury state, at the time such services were rendered. Pursuant to Ark. Code Ann. §11-9-508, the respondents are liable for the expense of these services, subject to the medical fee schedule.

6. The claimant has proven that she was rendered temporarily totally disabled, as a result of the effects of her compensable injury, for the periods of May 4, 2010 through May 10, 2010 and May 12, 2010 through June 21, 2010. Specifically, the claimant has proven by the greater weight of the credible evidence, that during these periods, she continued within her healing period from the effects of her compensable injury and was rendered totally disabled by her compensable injury. The claimant has failed to prove that she was rendered totally disabled by her compensable injury during any other periods.
7. The respondents have controverted this claim in its entirety.
8. The appropriate fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted temporary total disability benefits herein awarded.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the December 27, 2010, decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the

Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority's opinion finding that the claimant proved by a preponderance of the evidence that she sustained a compensable injury in the form of a spider bite. Based upon my de novo review of the record, I find that the claimant failed to meet her burden of proof.

The claimant was employed by the respondent employer in the phone bank. The claimant contended that in the early afternoon of May 3, 2010, within minutes of arriving at work she was bitten by a spider. The

claimant testified that upon arriving at work, she removed a chair from a well-lighted warehouse. While she was working, she felt a tickle and then felt a welt on her flank. The claimant was sought medical treatment from Mercy Medical Center complaining of back pain, dizziness and nausea. The claimant was ultimately diagnosed with a spider bite.

My review of the evidence in this case reveals that it is speculation and conjecture to conclude that the claimant was bitten by a spider at work. It is just as easy to conclude that the spider bit the claimant before she came to work. The record simply contains no evidence demonstrating that the spider was in the chair the claimant retrieved from the warehouse. Nor is there any evidence in the record indicating that the claimant was bitten upon her entering the respondent employers premises. 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 Constr. Co., et al v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979); Arkansas Methodist Hosp. v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

Accordingly, for all the reasons set forth herein, I respectfully dissent from the majority's award of benefits.

Frank - G004153

7

KAREN H. MCKINNEY, Commissioner