

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO.: G904551**

PATRICIA ZUBER, Employee	CLAIMANT
DOLLAR TREE STORES, INC., Employer	RESPONDENT
SAFETY NATIONAL CASUALTY CORP., Carrier	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT, TPA	RESPONDENT

OPINION AND ORDER FILED JUNE 15, 2021

Hearing conducted before ADMINISTRATIVE LAW JUDGE TERRY DON LUCY, in Pulaski County, Arkansas.

Counsel for the Claimant: HONORABLE EUGENE P. CLIFFORD, Attorney at Law, Little Rock, Arkansas.

Counsel for the Respondents: HONORABLE RANDY P. MURHPY, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

The above-captioned matter came on for a hearing on May 4, 2021, before the undersigned Administrative Law Judge. A Pre-hearing Order was entered in this matter by the undersigned Administrative Law Judge on February 3, 2021, which reflected the following stipulations:

- (1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim;
- (2) The employee/employer/carrier/TPA relationship existed at all relevant times; and,
- (3) The Respondents have controverted this claim in its entirety.

The pre-hearing Order of February 3, 2021, also reflected the issues to be adjudicated, as set forth below:

- (1) Whether the Claimant sustained a compensable spider-bite injury on June 7, 2019, and is entitled to appropriate benefits associated therewith, inclusive of reasonably necessary medical care and related expenses, and temporary total indemnity benefits for

dates that have yet to be identified;

(2) Whether the Claimant was terminated from her employment with Respondent Employer in retaliation for filing a workers' compensation claim, presumably pursuant to Ark. Code Ann. §11-9-107; and,

(3) Attorney's fees in relation to controverted indemnity benefits.

During preliminary discussions, the parties agreed that the Claimant's average weekly wage on the date of injury was \$384.00. (TR 7) With such amendment to the pre-hearing Order of February 3, 2021, noted on the record, such was introduced into the record without objection. (TR 7-8) Neither party offered documentary evidence. (TR 6; see also TR 25-27)

Findings of Fact and Conclusions of Law

(1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim;

(2) The Claimant has failed to prove, by a preponderance of the evidence, that she sustained a compensable spider-bite injury on June 7, 2019,

(3) All other issues are rendered moot.

Applicable Law

The party bearing the burden of proof in a workers' compensation matter must establish such by a preponderance of the evidence. See Ark. Code Ann. §§11-9-704I(2) and 11-9-705(a)(3). In order to demonstrate a compensable "specific incident" injury, as alleged herein, a claimant must prove, by a preponderance of the evidence, that he or she sustained an "accidental injury causing internal or external physical harm to the body...arising out of and in the course of employment," and which is identifiable by time and place of occurrence. Ark. Code Ann. §§11-9-102(4)(A)(i) and I(i). The alleged injury must also occur at a time when "employment services" were being performed and must be established by medical evidence supported by "objective

findings.” Ark. Code Ann. §§11-9-102(4)(B)(iii) and (D). In turn, “objective findings” are those findings “which cannot come under the voluntary control of the patient.” Ark. Code Ann. §11-9-102(16)(A)(i).

Also, it is long-settled those questions concerning the credibility of witnesses and the weight to be given their testimony are within the exclusive province of the Commission. (See, for instance, *Yates v. Boar’s Head Provisions Co.*, 2017 Ark. App. 133 (2017). It is further well-settled that determinations of compensability may turn solely upon matters of weight and credibility, particularly when such matters relate to a given claimant’s credibility. (See *Yates, supra*. In addition, see *Daniel v. Wal-Mart Stores, Inc.*, 2014 Ark. App. 671 (2014); *Kanu-Polk v. Conway Human Dev. Ctr.*, 2011 Ark. App. 779 (2011); and *Lee v. Dr. Pepper Bottling Co.*, 74 Ark. App. 43 (Ark. App. 2011)). Finally, a claimant’s testimony is never considered to be uncontroverted. *Gentry v. Ark. Oil Field Servs.*, 2011 Ark. App. 786 (2011) (citing *Nix v. Wilson World Hotel*, 46 Ark. App. 303 (1994)).

Testimony

Patricia Zuber

The Claimant testified that she was working the night shift for Respondent Employer on June 7, 2019, and taking care of her "last customer" when the following occurred:

It was time to close, I reached in and started to put some merchandise in the sack, and when I did, somethin' bit me. It was boom, like that [indicating], and my hand's swellin' -- I could feel it swellin'. By the time I got my hand out of the sack, my hand was about up to here [indicating]. (TR 9)

After initially reporting the alleged incident to her night shift supervisor, the Claimant managed to retrieve two buggies but apparently struggled to re-open the door to her workplace to return them inside given her allegedly swollen hand. (TR 10) Immediately thereafter, the Claimant

had another conversation with her night shift supervisor and stated that "No, I'm serious. I'm supposed to work tomorrow and the way my hand looks, I don't think I'm gonna make it." (*Id.*) Subsequently, when asked at what point she had presented to an emergency room, the Claimant testified as follows:

Well, I left -- we left there at the parkin' lot at 9:30 and it was 12:30 -- between 12:00 and 12:30 when I got home, and I just live about five (5) minutes from there. I don't know where I went, what I done. I had to have my sister -- I kept honkin' the horn, honkin' the horn for them to wake up come get me out of the car 'cause I couldn't get out of the car...I went that next mornin'. (TR 11)

According to the Claimant, upon such emergency presentation, her "sisters told them I died, so -- and they brought me back." (*Id.*) The Claimant subsequently testified to her understanding from medical personnel that she had been "bit by a spider" and that such had been "inside the sack." (TR 12) Upon inquiry by the undersigned Administrative Law Judge, the Claimant conceded that she never saw the spider which allegedly bit her. (TR 17) Following the close of cross-examination by Counsel for the Respondents, and upon further inquiry by the undersigned Administrative Law Judge, the Claimant alleged that she had been hospitalized for anywhere between seven to thirteen days following her alleged injury and underwent surgery which she described as follows:

They opened it up and got the venom out. It -- it [unintelligible] in there and they opened it up and dug it all the way down to the bone and they dug that out, and then they come and cleaned it, and then jerked that Band-Aid off and had this little cleanin' thing go all the way around in there and dig all in there, and it hurt. (TR 25)

During closing discussions, the Claimant's request to supplement the record with documentary medical evidence not supplied in accordance with the pre-hearing Order nor available at the time of the hearing was denied. (TR 25-27)

Medical and Documentary Evidence

Apart from the pre-hearing Order entered on February 3, 2021, there is no documentary evidence to discuss.

Adjudication

Although the Claimant presented as a polite and courteous witness, I can afford no credibility whatsoever to her description of the alleged injury of June 7, 2019. In particular, it is rather difficult to believe that an alleged bite from an insect which the Claimant admittedly never saw while reaching into a grocery bag would result in immediate swelling to her hand as soon as she withdrew it from the bag and that such would result in her driving aimlessly for approximately three hours after subsequently leaving work while attempting to arrive at her home some five minutes away -- especially when she was able to discuss the alleged incident cogently with her night shift supervisor and essentially complete her shift. In addition, there are no medical records to substantiate any of the Claimant's testimony regarding the incident or her alleged subsequent treatment, despite the requirements of the pre-hearing Order of February 3, 2021. Such were likewise unavailable at the time of the hearing, and I thus find that the Claimant has failed to establish a compensable specific-incident injury with medical evidence supported by objective findings and in light of her lack of credibility herein noted.

Order

Based on the foregoing discussion, including my observation of the witness and her testimony, the pre-hearing Order of February 3, 2021, and application of the statutory and case law cited above, I specifically find that the Claimant has failed to prove, by a preponderance of the evidence, that she sustained a compensable spider-bite injury during the course and scope of

Zuber -- G904551

her employment on or about June 7, 2019. All other issues are rendered moot and this claim is respectfully denied and dismissed.

The Respondents are ordered and directed to pay the Court Reporter's fee within 30 days of billing pursuant to Rule 099.20 of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

TERRY DON LUCY
Administrative Law Judge