**2016044733 Trial**

**STATE BOARD OF WORKERS' COMPENSATION**
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On February 16, 2018, a hearing was held in Thomson, McDuffie County, Georgia to decide 1) whether the Employee had a work injury for which he should get benefits and 2), if so, the designation of an authorized treating physician.

The record of hearing evidence closed as of the date of the hearing. It was briefly reopened, however, for receipt of certain stipulated facts. These stipulations were indeed collected, as is usually done, before the hearing officially started. However, they were inadvertently not read into the record. Therefore, with the agreement of the parties, the record is opened for receipt of those stipulations, but it is closed after that.

The hearing transcript was filed on March 9, 2018 and post-hearing briefs were received by March 22, 2018.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After considering all the admissible evidence as well as the witness demeanor and appearance, and after review of what the parties said in their briefs, it is found and concluded as follows:

1. Based on the stipulations made at the hearing (these are the ones that were taken before the hearing but not placed into the record until now), and with the agreement of the parties, it is found that the parties are subject to the Act and that the Board has jurisdiction to decide the issues in this claim; that the alleged accident occurred in Richmond County, which makes venue proper in contiguous McDuffie County; that the Employer was properly insured on the date of the accident; that the Employee was in the general employment of the Employer on the date of the accident earning an average weekly wage of $525.68; and that the Employer got timely notice, as defined by the Act, of an alleged work accident.

2. The Employee contends that, while he was working at the Employer, he was injured when he was bitten by a poisonous creature, likely some kind of insect or spider. The law says that the evidence burden is on the claimant to prove that he had an injury from an accident that arose out of and in the course of his employment and that the injury caused disability. Zamora v. Coffee General Hosp., 162 Ga. App. 82, 290 S.E.2d 192 (1982) and Dasher v. City of Valdosta, 217 Ga. App. 351, 457 S.E.2d 259 (1995). See also King v. Liberty Mut. Ins. Co., 126 Ga. App. 550, 191 S.E.2d 346 (1972).

3. In our case here, the Employee testified that, on November 17, 2016, while working at his campus mail delivery job and while on a loading dock, he felt two pinches on his left foot, which he thought felt like some kind of insect bites. He testified, however, that, when he went to his car and looked at the foot, he did not see anything. He did not testify to seeing any spiders or other harmful creatures around the loading dock. He testified that he did leave work early because he felt symptoms like a cold coming on. He testified, however, that he did not feel anything on the foot until November 22, 2016, when he started feeling two pin-point pain spots on top of that foot. He testified that, by the next day, the pain was more severe and that there was swelling and discoloration. He testified that he was admitted to the hospital November 24, 2016, that he was there for thirty two days, and that he eventually suffered an amputation of that foot, even part way up the shin. The medical evidence shows the extent of his injuries.

4. Looking first at the issue of whether the Employee suffered something to happen to him, as I said the medical evidence presents positive proof of at least that. As for whether this was from some kind of insect bite, this grows more difficult. The Employee's testimony does not really establish this. He found no insect or spider nearby or on him right afterwards. Also, contrary to his contention that he gradually got worse between the incident and his first treatment, there is the fact that there were no symptoms with the foot until five days later, by his own testimony. This is, for a venomous bite, too long of a time for me to infer a connection, especially without expert opinion. It is true that the Employee definitely had necrotizing fasciitis, as diagnosed at the hospital on November 24. However, this was described as an infection, and the doctors did not make a solid connection to an insect or spider bite. None of the histories say any more than it was a "possible" bite. Not only this, the Employee was diagnosed with diabetes, too. (Records from 2014 show treatment for uncontrolled diabetes.) Not only this, there is a report from the first hospital day that the Employee had a small puncture wound to the sole of his left foot, to go with ulceration--not the top of the foot, which was where the Employee said he felt the two pinches on November 16. There also is the fact that, though the Employee noticed no symptoms with the foot until five days later, in two short days his foot became massively infected. There is no medical evidence explaining how this catastrophic state arose in so fast a time. Therefore, given all the facts, and even considering the terrible injury that came about, I have difficulty finding that an insect bite is, more likely than not, the cause. There are too many conflicting facts.

5. Another question is whether this happened at work or someplace else. The Employee did testify to feeling something happen while at work on November 17, 2016. The Employee was not contradicted by any testimony or other evidence. However, there is again the fact, and again by the Employee's own testimony, that there were no symptoms to the foot for five days. Without expert opinion that an insect or spider bite can indeed take that long to manifest symptoms to the bitten area, I am very hesitant to make the connection. For all these reasons, I cannot find that the Employee has carried his burden of proof. There also is no evidence that any spiders or other such creatures were seen on or around the loading dock area.

6. Even assuming that this happened at work, and even assuming that it was from a spider or insect bite, there is a greater difficulty the Employee has proving his case. Even if I found an injury, this is only part of a claimant's burden. The statute says that a worker has to prove two things: that his injury came from an accident, and that this accident arose 1) "out of" his employment and 2) "in the course of" his employment. O.C.G.A. §34-9-1(4). Proving "arising in the course of" employment is not too hard. Indeed, I can find that, if this incident happened at work, it was definitely in the course of his employment. However, the "arising out of" means something a little more philosophical--that there must be a cause-and-effect connection between the work conditions and the accident. Davis v. Houston General Ins. Co., 141 Ga. App. 385, 233 S.E.2d 479 (1977).

7. By cause-and-effect, we are talking about risks from work. For an accidental injury to arise out of a claimant's employment, the claimant must show a causal connection between the employment and the injury—-the injury must be the rational consequence of some hazard connected with the employment. See Chaparral Boats, Inc. v. Heath, 269 Ga. App 339, 606 S.E.2d 567 (2004). See also O. A. Logistics v. Sturgess, 336 Ga. App. 134, 784 S.E.2d 432 (2016), in which it was held that, while it is true that not every injury which occurs while a worker is located somewhere at work necessarily arises out of the employment, an injury arises out of the employment "if it would not have occurred but for the fact that the conditions and obligations of the employment placed claimant in the position where he was injured." Id. at S.E.2d 437.

8. In our case here, again even assuming that some kind of spider or insect bit the Employee while at work, I must find that this was not related to employment. This is because I find that this was a hazard the Employee was equally exposed to even away from his employment. There is no evidence, like I said, that spiders or biting insects have been found at the Employer. I further find that this injury was not from a risk unique to his employment. Given the lack of a persuasive work connection, I also cannot find that this is a Sturgess situation, which is where the Employee could prove that his injury would not have occurred but for the fact that the conditions and obligations of the employment placed him in the position where she was injured. Perhaps if spiders or biting insects had been seen

there before, and if the Employer knew about it and yet required the workers to be near that area where the spiders were, that would be different. But there is no evidence of this.

9. For all these reasons, it is found that there is no causal connection between the employment and the injury, and so the injury, if it happened at work, did not arise out of the employment. Earlier, it was also found that it was, at best, only equally possible that the injury happened at work. For both of these reasons, it is concluded that the Employer/Insurer are not liable for benefits. O.C.G.A. §34-9-1(4).

## AWARD

**THEREFORE**, based upon the above findings and conclusions, the claim of the Employee for benefits for an injury that happened on or around November 17, 2016 is denied.

**IT IS SO ORDERED**, this the 22nd day of March, 2018.

**STATE BOARD OF WORKERS' COMPENSATION**

**This order has been electronically signed and approved**

**Jerome J. Stenger**

**ADMINISTRATIVE LAW JUDGE**