IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2004 MTWCC 52

WCC No. 2003-0915

STEPHEN M. PETERS

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: The claimant suffered from cellulitis caused by bacteria. It occurred at three different sites on his body and he believes that it was due to spider bites while he was working even though he did not see any spiders while working and was not aware he had been bitten.

Held: While it is possible that the claimant was bitten by spiders at work, he has failed to demonstrate on a more-likely-than-not basis that he was in fact bitten at work and that his cellulitis was due to such bites.

Topics:

> **Proof: Burden of Proof.** A claimant must show more than a mere possibility that an industrial accident occurred.

¶1 The trial in this matter was held in Helena, Montana, on June 25, 2004. Petitioner, Stephen M. Peters, was present and represented himself. Respondent was represented by Thomas E. Martello.

¶2 Exhibits: Exhibits 1 through 4 were admitted without objections.

¶3 Witnesses and Depositions: Petitioner and Kevin Bartsch testified. No depositions were submitted.

¶4 Issues Presented: The sole issue presented for decision is whether the claimant suffered a work-related injury on August 20, 2003.

¶5 Having considered the Pretrial Order, the testimony presented at trial, the demeanor and credibility of the witnesses, the exhibits, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

¶6 On August 20, 2003, petitioner (hereinafter "claimant") was working as a laborer for Northside Welding, Inc. He was working on a construction site at the Nevada Reservoir located near Helmville, Montana.

¶7 While working on the Nevada Reservoir project, the claimant slept at night in his car, in a friend's camper, or at a labor union facility near the Lewis and Clark County Fairgrounds.

¶8 While working on Thursday, August 21, 2003, the claimant noticed a small red mark on his left knee. At the time, he thought it looked like a "sliver." (Trial Test.)

¶9 He worked Friday, August 22, 2003. On that day he noticed a red spot on his right elbow.

¶10 On Sunday, August 24, 2003, the claimant's knee was swollen and he felt ill.

¶11 The claimant returned to work on Monday, August 25, 2003. However, he was limping due to pain and swelling in his left knee. His employer urged him to seek medical care.

¶12 The claimant then went to the emergency room of St. Peter's Hospital in Helena, where he was seen by Dr. D. L. Kuntzweiler. Dr. Kuntzweiler diagnosed cellulitis of the left knee, right elbow, and forehead and prescribed antibiotics, including intravenous antibiotics. The cellulitis was cultured and the infection identified as gram negative staphylococcus aureus.

¶13 As a result of the infection, the claimant was off work for nine days and incurred medical expenses for his treatment.

¶14 At the time he sought medical care, the claimant believed he had been bitten by spiders at work, however, he did not recall seeing any spiders or being aware of any bite. Dr. Kuntzweiler wrote in his medical note of August 25th, "Mr. Peters thinks he has been bitten by spiders, although as it turns out, he has actually not seen any spiders, but in the last week he has developed sores on several spots. " (Ex. 2 at 2.) The doctor neither verified nor contradicted the possibility that the claimant was bitten by spiders, writing, "It is not really clear what the inciting event was. Mr. Peters feels it was spider bites." (*Id*. at 4.)

¶15 At trial the claimant testified that he believes that spiders were in overshoes. He conceded that he could also have been bitten by spiders while sleeping.

¶16 The claimant has failed to persuade me on a more-likely-than-not basis that his cellulitis was due to being bitten by spiders at work. Certainly, it is possible that he was, but a mere possibility is insufficient to establish that an industrial accident occurred. His

hypothesis is no more likely than his being bitten in his sleep, especially since he did not notice any spiders while working. Moreover, medical opinion relating his bacterial infection to spider bites is lacking.

CONCLUSIONS OF LAW

¶17 This case is governed by the 2003 version of the Montana Workers' Compensation Act since that was the law in effect at the time of the claimant's industrial accident. *Buckman v. Montana Deaconess Hospital,* 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¶18 The claimant bears the burden of proving by a preponderance of the evidence that he is entitled to the benefits he seeks. *Ricks v. Teslow Consolidated,* 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wicken Bros. Construction Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

¶19 The claimant has failed to carry his burden of proving he was injured at work.

JUDGMENT

¶20 The claimant has failed to establish on a more-likely-than-not basis that he was injured at work. Therefore, he is not entitled to workers' compensation benefits. His petition is **dismissed with prejudice**.

¶21 This JUDGMENT is certified as final for purposes of appeal.

¶22 Any party to this dispute may have twenty days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

DATED in Helena, Montana, this 29th day of June, 2004.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Stephen M. Peters
Mr. Thomas E. Martello
Submitted: June 25, 2004