

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

(October 22, 1996 Session)

FILED
January 17, 1997
Cecil W. Crowson
Appellate Court Clerk

LARRY RICHARD WILLIAMS,)
)
Plaintiff/Appellant,) DAVIDSON CHANCERY
)
)
VS.) Hon. Ellen Hobbs Lyle,
) Chancellor
)
)
SCOTT BOLT & SCREW CO., and) No. 01S01-9604-CH-00077
STATE AUTO INSURANCE CO.,)
)
Defendants/Appellees.)

For the Appellant:

Phillip H. Miller
Sarah Stein
Nashville, Tennessee

For the Appellees:

Kent E. Krause
BREWER, KRAUSE, BROOKS &
MILLS
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court
Robert S. Brandt, Senior Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

Brandt, Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law.

The plaintiff filed suit alleging that a brown recluse spider bit him while he was at work on April 15, 1993. The trial court denied his claim. Because the evidence does not support the plaintiff's claim, the trial court decision is affirmed.

The plaintiff testified that his left leg started itching at work at about 2:00 p.m. on April 15 or maybe April 19, he is not sure which. At any rate, in his deposition the plaintiff testified that the next thing he noticed was a sore knee the following morning, but he did not pay much attention to it. He testified differently at trial. The plaintiff and his live-in girlfriend both testified they saw a red mark on his knee when he undressed after work the afternoon the itching started.

In any event, the pain started the next morning. The plaintiff went to work and worked almost all day. The pain got bad toward quitting time, and the employer encouraged the plaintiff to see a doctor. He did, and eventually came under the care of two Vanderbilt doctors, Phillip Wolinsky, an orthopedic surgeon, and Bruce Shack, a plastic surgeon. Neither of them know whether a brown recluse spider bite caused the plaintiff's wound. But it was serious whatever caused it, and the plaintiff suffers permanent impairment as a result of it.

The doctors' testimony contradicts the plaintiff's claim that a brown recluse spider bit him at work. Dr. Wolinsky does not know much about brown recluse spider bites, and what little he does know and shared in his deposition does not support the plaintiff's claim. According to Wolinsky, the literature referred to by the plaintiff's counsel indicates that while a bite may not cause any immediate pain, some localized pain develops within an hour or so.

Dr. Shack does know about spider bites. He has treated many patients for them and has written about them. He testified that it is not typical for a bite to be several hours old and for itching to be the only symptom. It would be unusual, he said, for there to be no pain from a brown recluse spider bite within several hours.

The plaintiff's contends the spider bit him at work several hours before he noticed the itching at 2:00 p.m. He and his girlfriend both say that the pain started the next morning. And even then, it was not bad enough to keep the plaintiff from working all day. Based on the medical evidence, it seems improbable, or maybe even impossible, that a brown recluse spider bit the plaintiff at work before 2:00 p.m.

As noted, neither doctor even diagnosed the plaintiff's wound as a brown recluse spider bite. And no one has ever seen or complained of spiders where the plaintiff worked. The employer called in exterminators after the plaintiff's problem arose, and the exterminator set traps for spiders. No spiders turned up.

In the final analyses, it is possible that a brown recluse spider bit the plaintiff, and it is possible that the spider bit him at work. But all indications are that if a brown recluse spider bit the plaintiff, it did not happen at work. The timing of the manifestation of symptoms is simply inconsistent with the plaintiff's claim.

The trial court's decision denying workers' compensation is affirmed at the plaintiff's costs.

Robert S. Brandt, Judge

CONCUR:

Frank F. Drowota, III, Associate Justice

Joe C. Loser, Jr., Judge

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<i>LARRY RICHARD WILLIAMS,</i>	}	<i>DAVIDSON CHANCERY</i>
	}	<i>No. 94-2314-1 Below</i>
<i>Plaintiff/Appellant</i>	}	
	}	<i>Hon. Ellen Hobbs Lyle,</i>
<i>vs.</i>	}	<i>Chancellor</i>
	}	
<i>SCOTT BOLT & SCREW CO. and</i>	}	<i>No. 01S01-9604-CH-00077</i>
<i>STATE AUTO INSURANCE CO.,</i>	}	
	}	
<i>Defendants/Appellees</i>	}	<i>AFFIRMED.</i>

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Plaintiff/Appellant and Surety for which execution may issue if necessary.

IT IS SO ORDERED on January 17, 1997.

PER CURIAM