

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GEORGE NIX,)
)
 Claimant,)
)
 v.)
)
 TRANSOPS, INC.,)
)
 Employer,)
)
 and)
)
 LIBERTY NORTHWEST INSURANCE)
 CORP.,)
)
 Surety,)
)
 Defendants.)
)
 _____)

IC 2009-018867
FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

Filed November 18, 2011

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Rinda Just, who conducted a hearing in Boise, Idaho on January 11, 2011. Claimant was present and was represented by Richard K. Dredge, Esq. Defendants Transop, Inc. and Liberty Northwest Insurance Corp. were represented by Kimberly Doyle, Esq. The matter came under advisement on April 26, 2011. By Order dated November 7, 2011, the matter was reassigned to the Industrial Commission for decision.

ISSUES

Per stipulation of the parties, the following matters are at issue:

1. Whether Claimant suffered a compensable accident causing an injury;
2. Whether the condition for which benefits is sought is casually related to the alleged accident; and
3. Extent and degree to which Claimant is entitled to medical treatment.

Remaining issues of Claimant's entitlement to time loss, impairment, and permanent disability benefits are reserved by agreement of the parties. (Tr. 8/17-24).

CONTENTIONS OF THE PARTIES

Claimant, who at all times relevant hereto, was employed as a long haul trucker, contends that in early July 2009, he received at least two spider bites while performing his job duties. Claimant contends that these bites constitute an accident arising out of and in the course of his employment. As a result of the spider bites, Claimant contends that he developed a secondary MRSA infection at the bite sites which subsequently required surgical irrigation and debridement. Claimant contends that the secondary infection is a compensable consequence of the original accident/injury and that he is entitled to medical and other benefits related to treatment of his MRSA infection.

Defendants contend that the evidence does not adequately support a conclusion that Claimant suffered a compensable accident/injury. Specifically, Defendants contend that the evidence fails to establish that Claimant actually suffered spider bites in early July 2009, and that Claimant's development of MRSA infections on his abdomen and lower extremity were spontaneous, coincidental, and wholly unconnected with his employment. Further, Defendants argue that even if an accident did occur, Claimant failed to reasonably locate the accident as to time when and place where it occurred. Although Defendants do not deny that Claimant suffered a severe MRSA infection requiring medical/surgical care, Defendants argue that this infection most likely had its genesis in an infected hair follicle(s) and not as the result of any traumatic event associated with Claimant's employment.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant taken at hearing;
2. Claimant's Exhibits 1 – 6, admitted at hearing;

3. Defendants' Exhibits A through T, V and W, admitted at the hearing;
4. The deposition of William F. Nowlin, M.D., taken January 25, 2011;
5. The deposition of Garrison H. Ayars, M.D., taken February 4, 2011.

FINDINGS OF FACT

1. At all times relevant hereto, Claimant was employed as a long haul trucker by Defendant Transops, Inc., sometimes known as Triple L Transport. (Tr. 22/21-23/15).
2. As of the date of hearing, Claimant was 65 years old, and resided in Boise, Idaho.
3. Claimant's work for Transops took him throughout the lower 48 states. In early July 2009, he transported a refrigerated load of meat to Cincinnati, Ohio. After completing delivery of the load, he spent Saturday, July 4 and Sunday, July 5 at a truck stop in Kentucky, preparatory to being assigned a new load for pick up on July 6, 2009. During his brief time in Kentucky, Claimant stayed with his truck at a local truck stop.
4. Claimant testified that he noted the presence of spiders and spider webs in the vicinity of the truck stop. However, although he noted webs on the outside of his truck, he was very clear in his testimony that he did not ever note the presence of spiders, or evidence of the same, in the interior of his sleeper cab.
5. However, Claimant testified that the means by which a so-inclined arachnid could gain entry into the sleeper cab was assured by some modifications that Employer had recently made to the vehicle operated by Claimant.
6. At some point shortly before the weekend of July 4, 2009, Employer caused to be installed on the outside of the sleeper cab an accessory power unit (APU), intended to provide power to heating and cooling systems located inside the sleeper cab of the vehicle.

7. To that end, several holes were drilled in the floor of the sleeper cab, through which various cables and the like were threaded to connect the APU on the outside of the vehicle to heating and cooling equipment on the inside of the vehicle. Claimant testified that after the installation of the cables, gaps were left in the openings of a size sufficient to admit entry to insects, if not small rodents. These gaps were not closed until some point in time after Claimant suffered the injuries which are the subject of this claim.

8. Claimant's sleeper cab is equipped with a bed, cabinetry and other accessories which enable him to sleep in his vehicle when necessary. He testified that he typically wears a t-shirt and underwear to bed.

9. On the morning of July 6, 2009, Claimant picked up a load and continued on his way. He spent the night in his vehicle on July 10, 2009. He testified that he first noted symptoms relating to the instant claim on the morning of July 11, 2009. On that day, he noted the following:

A (By Claimant) All right. I had – I felt a place on my stomach, you know, the bottom of my stomach and it was like a – I don't know. It could have been anything. I couldn't see it, because I have got a – but I could feel it and that was on the 11th, which was a Saturday morning I think. And, then, it started – you know, I felt it and it started swelling and I was in Big Springs, Nebraska, at the time. So, I left Big Springs, Nebraska, and I went to Grand Island, Nebraska, which is about 200 miles away and, you know, you take – when you're on the road like that the truck stops have showers, you know, you go in and – you know, if you want to take a shower. So, anyway, I went in and took a shower in Grand Island, Nebraska, and this was later that day and I looked at it and I looked at it in the mirror, you know, in the bathroom and – when I was taking a shower I felt another place that was on my inner leg right here and they both pretty much looked the same and it started swelling and it had gotten probably about twice as big as my thumb by that time, so I decided I'd spend the night in Grand Island, Nebraska, and the next morning when I got up, Sunday morning, which was the 12th, it had gotten even bigger and it was slight feverish, so I have a – at the time I was supposed to have had insurance, but, anyway, I had a number for a nurse's – a – you know. So, I called the –

Q (By Mr. Dredge) Like a hotline?

A Yeah. A hotline for a nurse. Right. I called the nurse and told her what was – the

deal was on it and – you know. And she asked me questions and I answered the best I could, you know, as to what was going on with it. So, she advised that I go see a doctor and get – and –

Tr. 30/4-31/9.

10. Accordingly, on July 11, 2009, Claimant noted two separate areas of swelling, one spot on his abdominal wall, and another spot on his inner right thigh.

11. Claimant believes that he was bitten by a spider, or other insect, on the night of July 10, 2009, although he freely admits that he did not see the offending spider, nor any other spider at any other time in the interior of his sleeper cab. He proposes that the bite must have happened while he was asleep in his sleeper cab because (a) he was unclothed, and thus available to be bitten, and (b) if he had been bitten while awake, he would have made some note of that fact.

12. Claimant was first seen for medical treatment on July 12, 2009 at York General Hospital in York, Nebraska. On the occasion of his evaluation, the following history was recorded by Dr. Fago:

George is a 63-year-old male. He is a truck driver and had been passing through. He has what looks like to be a spider bite or some sort of bite on his abdomen. It is right where the pants kind of rub against it. Started as small area, now there is some surrounding erythema. He also has one on his inner right thigh. He also relates the story that on his index finger a few weeks ago a similar bite type area with redness and he poked a hole in it and pus was coming out of it. He does not think that he has had any fevers, otherwise doing well and he has been putting peroxide and Neosporin on it.

D. Exh. F., p 55.

13. Notably, the intake history references an index finger lesion from which Claimant had suffered a few weeks prior to his July 12, 2009 date of evaluation. Interestingly, the intake history also reflects that the index finger lesion was similar in appearance to the abdominal wall and right thigh lesions which were the subject of his July 12, 2009 evaluation. Finally, the intake

history reflects that the index finger lesion, too, was a “bite type area.”

14. On being questioned about the York General Hospital intake note of July 12, 2009, Claimant testified that he had previously suffered an index finger lesion as described in that note, and that it was due to a splinter he got in his finger while felling a tree some weeks prior to July 12, 2009 at his place of residence. Claimant specifically denied giving a history to Dr. Fago that his index finger lesion, too, was the result of an insect bite.

15. On examination of Claimant’s abdomen and thigh, the following findings were noted on the occasion of the July 12, 2009 ER visit:

On his abdomen there is a small pinpoint area that almost looks like a bite or puncture wound with surrounding erythema that is warm. He is nontender there. On the inside of his right thigh there is a very small 1mm pinpoint area with just mild surrounding erythema as well.

D. Exh. F., p 55.

16. Claimant’s complaints continued to worsen, and on July 13, 2009 he presented to the Porter Hospital in Valparaiso, Indiana for further treatment/evaluation. On July 13, 2009, William Yount, M.D., authored the following concerning Claimant’s objective findings on that date:

Skin: Location: abd and r upper thigh. Raised area palpable, consistent with abscess. Noted to be erythematous, fluctuant, tender, hard, with area of surrounding erythema, warm. Noted to be approximately 10 cms. in size.

D. Exh. H., p. 75.

17. Dr. Yount incised the topmost portion of the abscess with a scalpel, and managed to express a small amount of pus from the wound, which was cultured and eventually found to contain Methicillin Resistant Staph Aureus (MRSA). Claimant was admitted to the hospital, and was later evaluated by William Nowlin, M.D. On the occasion of his July 15, 2009 evaluation of Claimant, Dr. Nowlin noted the following:

ABDOMEN: His abdominal examination reveals a very moderately-obese abdomen, with a fairly large panniculus in the lower abdomen. There is, on that panniculus, a hardened area that measures 2 cm in diameter. However, the area of redness extends over the entire right lower quadrant of his abdomen, and down and underneath the panniculus. There is a similar area of redness that is separate from this that involves the right upper thigh. There is also a pinpoint area with an area of induration that appears to be an insect bite, and a similar area on the midportion of the right lower quadrant of his abdomen. It appears that he has 2 separate and distinct insect bites, and apparently culture from the drainage has revealed MRSA.

D. Exh. H, p. 91.

18. On July 16, 2009, Claimant underwent a surgical irrigation and debridement of the necrotic tissue in his thigh and abdominal wall.

19. Claimant received follow-up care from time to time, and from place to place, as he continued to drive his truck in the course of his work.

20. Claimant testified that he has made a full recovery, and is no longer in need of medical treatment.

21. Claimant specifically denies ever having suffered from skin infections, boils, furuncles, etc. of the type he developed on or about July 11, 2009. Nor is there any medical evidence that Claimant had ever suffered from similar conditions prior to July 11, 2009.

22. Claimant was incarcerated in Nevada following a conviction for felony fraud between 2001 and 2004/2005.

23. Claimant denies having friends or acquaintances who have suffered from a MRSA infection in the recent past.

24. Both Dr. Nowlin, Claimant's treating physician, and Dr. Ayars, Defendants' retained expert, testified that unfortunately MRSA is becoming ubiquitous not only in the hospital, but in the population at large. MRSA inhabits the skin surface and nasal cavities of many individuals. It generally causes no harm unless it is introduced through a break in the skin,

to the tissues below. Dr. Ayars testified that in most cases, the bacterium finds its way into soft tissue via hair follicles. Skin trauma is another means by which bacteria can be introduced into underlying soft tissue, where it causes an infection.

25. Here, it is clear that Claimant suffered from a MRSA infection, because cultures taken at the Portage Hospital confirmed the presence of the bacteria. What is at issue in this case is whether Claimant's MRSA infection can be said to bear a causal connection to the alleged accident. On this point, the opinions of Drs. Ayars and Nowlin diverge significantly.

26. Dr. Nowlin is a board certified general surgeon practicing in Valparaiso, Indiana. He treats 2 to 3 MRSA patients per month. Some fraction of these patients acquired MRSA infections through insect/arachnid bites. Dr. Nowlin testified that insect/arachnid bites are one way, though perhaps not the most common way, for people to contract MRSA infections. Insect/arachnid bites provide the means by which MRSA can gain a toehold in underlying tissue, since insect/arachnid bites break the skin. The organism itself is either already present on the skin surface, or is introduced by the insect/arachnid. As to whether Claimant suffered an insect/arachnid bite, Dr. Nowlin testified that Claimant's objective findings and presentation on exam were typical for a spider bite. Examination of the abdominal wall and thigh lesions demonstrated pinpoint areas in the center of the lesions thought to represent insect/arachnid bites. He felt that these pinpoint punctures provided the access for MRSA bacteria to invade underlying tissue.

27. Dr. Nowlin was asked to speculate concerning the significance of Claimant's earlier index finger infection. He acknowledged that if this was a MRSA infection, it is plausible to suppose that Claimant could have scratched his abdomen or thigh with his index finger, and thus introduced MRSA through such a scratch. However, Dr. Nowlin rejected this hypothesis

since there was no evidence of such a scratch mark or marks on either Claimant's thigh or abdomen. Again, the only breaks in the skin identified by Dr. Nowlin were the pinpoint punctures which he thought were most consistent with an insect or arachnid bite.

28. Garrison H. Ayars, M.D. is board certified in internal medicine, infectious disease and allergy and immunology. He practices in western Washington.

29. Dr. Ayars saw Claimant for the purposes of an I.C. § 72-433(1) examination on or about March 5, 2010. Dr. Ayars acknowledged that in most instances, the staph bacteria that live on the outer surface of the skin cause no problems. It is only when the bacteria are introduced into underlying tissues through a skin break, or through a hair follicle, that infections occur; Dr. Ayars acknowledges that a prerequisite to any MRSA infection is some avenue by which the bacteria can get past the barrier of the skin, and into soft tissues. Dr. Ayars testified that by far, the most common avenue of a MRSA infection is through a hair follicle. Although Dr. Ayars acknowledges that any break in the skin is sufficient to provide an avenue for the spread of the infection, he does not accept a traumatic origin of the infection in this case, because he does not believe that there is any evidence to support a conclusion that Claimant suffered a break in the skin which afforded the opportunity for the bacteria to dig in. In this regard, Dr. Ayars testified:

A. I did not get a history of clear-cut trauma that was work-related that would have caused ingress of an infection in the area of the trauma that would have caused the problem. Furthermore, as we already discussed, it's known that most staph infections of the skin often start around hair follicles and Mr. Nix, himself, admitted he doesn't remember any specific trauma. At least that's what he told me. He just noticed bumps on his skin. So the history was very consistent with getting hair-follicle infected and spread from there.

So, that is not unique to the workplace. We all get little infections of hair follicles from time to time. Most of them, fortunately, don't spread like his did. Therefore, I thought it was not unique to the workplace. I had no history of trauma, I had no history of a wound that was work-related and, therefore, did not think it was work-related on a more probable than not basis.

. . .

Q. (By Ms. Doyle) All right. Now, one of the things that you stated in your report and you actually just also mentioned, Doctor, was that there was no history of trauma and no documentation of any insect or arachnid bite. That's on pages, I think, 4 and 5 of your report. So I know that you reviewed the medical records from the hospital in Indiana, because they are mentioned in your report and, as you know, those records refer to Mr. Nix having a possible insect bite. So even in light of those records, why do you still think that there's no history of any sort of insect bite or that kind of trauma?

A. Well, he only guessed in retrospect. He does not remember getting a bite. He did not tell me got a bite and found a spider.

Q. Okay.

A. Okay?

Q. Sure.

A. He was just guessing that he might have. And, admittedly, all the physicians are just guessing in that he might have if they do think it was related. But, of course, if the patient relates that you to [sic], you listen and you may put it in your report. As you probably know from reviewing the literature on this, a lot of people develop infections of their hair follicles or the skin and in retrospect think that they have had a spider bite and incriminate a spider when there really wasn't any evidence. They just couldn't think of any other thing that might have been the source of this. So that happens a lot where they just think they may have. Again, Mr. Nix admitted to me that he had no knowledge that he had a spider bite.

Q. Okay. Along those lines when we took Dr. Nowlin's deposition a couple of weeks ago, his conclusion is that Mr. Nix was in fact bit by a spider and he referred a couple of times to Mr. Nix having a pinpoint site on both his abdomen and his right thigh and those were the operative areas, as you probably remember, and so he thought that those two pinpoints were where the spider or an insect had bit Mr. Nix. Do you have any comment on that? Do you agree? Disagree?

A. There's absolutely no evidence to support that. He's only taking it on faith. On the other hand, we know that infections of hair follicles or staph are ubiquitous and almost all of us get them from time to time, and so that is a much, much, much more likely scenario. Just statistically speaking, you have millions of skin staph infections without bug bites. Insect bites or brown recluse bites are very rare and very few visits to the emergency room related to brown recluse bites. So statistically speaking, you have something that happens millions of times a year to something that is very rare. He has no proof that there was a spider bite. He has no evidence of a spider. He didn't bring in a spider. The patient didn't say he had a spider. He doesn't know. He was

guessing. So you're taking it one step away from that. The physician is guessing even more.

Ayers Depo, 113/10-14/5 and 4/12-17/2.

30. Absent evidence of a traumatic break in the skin, Dr. Ayars proposed that it is more likely than not that Claimant's infection is simply the result of coincidental transmission of the bacteria into the soft tissue of Claimant's abdominal wall and thigh via two or more hair follicles.

31. Defendant's Exhibit S contains a journal article entitled "It's Not a Spider Bite, It's Community-Acquired Methicillin-Resistant *Staphylococcus aureus*," authored by Tamara J. Dominguez, MD. The article was published in the *Journal of the American Board of Family Medicine*. It is not clear that this journal is a peer reviewed journal. The article suggests that many spontaneous MRSA infections are erroneously misdiagnosed by physicians as spider bites. The article suggests that MRSA infections are more commonly transmitted from person to person.

32. Claimant's Exhibit 6 contains an article from "PubMed" entitled "Spider Bites Presenting with Methicillin-Resistant *Staphylococcus aureus* Soft Tissue Infection Require Early Aggressive Treatment," suggesting that spider bites not infrequently lead to MRSA infections.

DISCUSSION AND FURTHER FINDINGS

33. The terms "accident" and "injury" are terms of art under the Idaho Workers' Compensation law. At I.C. § 72-102(18), those terms are defined as follows:

(18) "Injury" and "accident."

(a) "Injury" means a personal injury caused by an accident arising out of and in the course of any employment covered by the worker's compensation law.

(b) "Accident" means an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury.

(c) "Injury" and "personal injury" shall be construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. The

terms shall in no case be construed to include an occupational disease and only such nonoccupational diseases as result directly from an injury.

34. In the instant matter, the Defendants do not raise “arising” and “course” defenses to the claimed accident. Indeed, if the subject accident occurred as alleged, then it seems clear that the accident is one which both arose out of, and occurred in the course of Claimant’s employment. *See, Vawter v. United Parcel Services, Inc.*, IC 2010-000114 (May 17, 2011). The “course” requirement is satisfied by the fact that Claimant’s work includes continuous travel from place to place. The “arising” requirement is satisfied by proof that the risk to which Claimant was exposed (spider bite) resulted from his employment. Rather, Defendants assert that Claimant was not bitten by a spider/insect as he alleges, and that there was therefore no untoward mishap/event sufficient to constitute an “accident” under Idaho law. The MRSA infection is explained as a coincidental infection, per the opinion of Dr. Ayars. Defendants’ fall-back position is that even if an accident occurred, Claimant has failed to reasonably locate the same as to time when and place where it occurred.

35. The latter defense can be disposed of rather easily; Claimant’s testimony establishes that he had neither abdominal wall nor thigh symptoms prior to the morning of July 11, 2009. He first noted symptoms sometime after awakening on July 11, 2009. He believes he was bitten by a spider, and he believes it most likely that the bites occurred after he fell asleep on the evening of July 10, 2009. Otherwise, he would probably have noted the bite had it occurred while he was awake. The Commission finds Claimant’s reasoning in this regard to be persuasive, and further finds that Claimant has reasonably located the occurrence of the claimed accident as to time when and place where it occurred.

36. Turning next to Defendants’ principal defense, i.e. that there was no untoward event/mishap causing injury to Claimant’s body, a resolution of this issue depends on

ascertaining whether Claimant's MRSA infection was, in fact, introduced into Claimant's abdominal wall and thigh via a traumatic break in the skin. In making this determination, it matters not whether the bacteria was introduced by the spider itself, or rather, whether the bacteria already existed on the surface of Claimant's skin, only to be afforded an opportunity for ingress via the puncture wound. In either case, the MRSA infection would be deemed to be a natural and probable consequence of the original trauma, i.e. the break in the skin.

37. Accordingly, to resolve the case, it is only necessary to come to grips with the issue of whether Claimant's MRSA infection arose coincidentally and spontaneously via a hair follicle, or rather, whether Claimant's infection is a consequence of a traumatic breach of the skin caused by an insect/arachnid bite.

38. As noted above, Dr. Ayars has proposed that it is no more than a "guess" that Claimant suffered a traumatic break in the skin through which the bacteria was introduced. He alleges that Dr. Nowlin possessed no evidence whatsoever to support this theory of causation. However, a critical review of the medical records discussed above, as well as Dr. Nowlin's testimony, persuades the Commission to the opposite conclusion. The initial treatment record from York General Hospital dated July 12, 2009 reflects the presence of two small puncture wounds, one on the abdominal wall, and one on the thigh, which were located in the centers of the two areas of redness and swelling. Dr. Nowlin, too, noted the same phenomena on the occasion of his evaluation on July 15, 2009. Defendants have argued that Dr. Nowlin is incapable of making any judgment concerning whether or not there was an insect bite, because by the time he saw Claimant on July 15, 2009, the abscesses, or one of them, had been lanced and an attempt made to drain the same. However, Dr. Nowlin's testimony on this point was very clear, he testified that his exam identified two pinpoint punctures, one on the thigh and one on

the abdomen, very typical of spider bites. Nothing about the occurrence of the intervening lancing of the abscess is inconsistent with Dr. Nowlin's observations concerning the two puncture marks, unless, of course, the incision overlaid at the situs of the puncture mark. Evidently, it did not. Further, it will be recalled that before the abscess was incised, Claimant was evaluated at York General Hospital on July 12, 2009, and findings identical to those described by Dr. Nowlin were noted at that time.

39. Dr. Ayars' conclusion that Claimant did not suffer a traumatic skin break, is unsupported by the evidence. His statement that Dr. Nowlin merely guessed when reaching such a conclusion is clearly controverted by Dr. Nowlin's detailed testimony concerning his findings. The Commission is persuaded that Dr. Nowlin did not guess, but rather, that both Dr. Nowlin and Dr. Fago, noted the presence of an abdominal wall puncture wound as well as a puncture wound on the right thigh.

40. The Commission appreciates that the journal article authored by Dr. Dominguez proposes that MRSA infections are frequently misdiagnosed as spider bites. However, there was no testimony that Claimant has come into personal contact with anyone else in the weeks preceding July 11, 2009 from whom he might have contracted MRSA. Also, there is evidently other medical authority which support the proposition that spider bites not infrequently lead to MRSA infections. (See Claimant's Exh. 6).

41. Finally, against Defendants' assertions that Claimant's MRSA infection is coincidental, and is more likely than not the result of MRSA bacteria on the surface of his skin migrating down a hair shaft into the follicle, the facts of this case actually seem to undermine this proposition. If the onset was indeed spontaneous or coincidental, it would be strange indeed, for two hair follicles, one on Claimant's thigh, and one on his abdomen, to become infected at the

same time. It seems far more likely that the contemporaneous onset of thigh and abdominal wall infections speak to the agency of a spider bite causing a traumatic skin break, and allowing the introduction of the offending bacterium.

42. As Defendants have noted, this case bears passing similarity, at least, to two prior Idaho decisions, *Koester v. State Insurance Fund*, 124 Idaho 205, 858 P.2d 744 (1993), and *Roe v. Boise Grocery Company*, 53 Idaho 82, 21 P.2d 910 (1933). Of the two, *Koester* is worthy of some further discussion. In *Koester*, claimant was employed as a home health care nurse. Her duties took her around rural North Idaho visiting the homes of elderly persons who were either housebound or needed help caring for themselves. One of her clients was elderly shut-in who lived in a trailer outside of Potlatch, Idaho along with her 25 cats. According to the decision, neither the client, nor her cats, ever left the trailer. Not surprisingly, conditions interior of the trailer were described as “deplorable.”

43. While changing the soiled bed linen of the trailer owner, claimant testified that she noted an itching sensation on the inside of her left ankle. Shortly thereafter, she looked at the spot and noted that she had gotten a bite of some type, although she freely admitted that she did not actually feel the bite initiate. Within two to three months of following this episode, claimant began to note numbness and tingling in her extremities, increasingly severe headaches and chest pains. Some months later she was provisionally diagnosed with Lyme disease.

44. The evidence also demonstrated that claimant lived in a residential area outside of Potlatch with two large fir trees in the back yard, and that claimant owned 2 outside pets and 1 inside pet. Claimant’s husband was a logger, and was logging during the time that claimant first noticed the spot on her ankle.

45. Claimant contended that she suffered an accident arising out of and in the course of her employment. Specifically, she contended that she suffered a tick bite while at the home of the elderly shut-in, as a result of which she developed Lyme disease.

46. On this question, the Industrial Commission found on the basis of the evidence before it, that claimant had failed to adduce proof sufficient to meet her burden of establishing the occurrence of a work related accident/injury. In this regard, the Commission reasoned that it was actually more likely that claimant encountered ticks in her own home, than in the client's home where she claimed to have been bitten. The Supreme Court upheld the Commission's determination noting that claimant neither saw a tick in the trailer, nor felt a tick bite. In this regard, it will be recalled that neither claimant's elderly client, nor her animals, ever left the trailer. Although the trailer was in deplorable condition, there was no evidence to suggest the presence of ticks in the trailer. The court found that the Commission appropriately relied upon evidence that it was just as, if not more, likely that claimant's tick bite occurred at her own home, where she had greater exposure to ticks, from her animals, and from her woodsman husband. The case was distinguished from *Roe v. Boise Grocery Company, supra*, where the evidence established the presence of a tick embedded in claimant's body.

47. Even though *Koester* bears some similarity to the facts of the instant matter, it is distinguishable on its facts. In *Koester*, there was ample testimony establishing an alternate, and possibly more likely, scenario for infection other than a work related cause. Here, the evidence establishes that it is more likely than not that Claimant was bitten by a spider while performing his work as a long haul trucker. The alternate mechanism of infection, i.e. infection of underlying tissues via a hair follicle, has been effectively rebutted. For these reasons, the

Commission does not find that *Koester, supra*, mandates a different result than the one we reach today.

48. Having found that Claimant has met his burden of proving the occurrence of an accident/injury, in the form of a spider bite with resultant MRSA infection, the Commission further concludes that Claimant is entitled to medical and other workers' compensation benefits associated with treatment for the spider bite and resultant infection.

CONCLUSIONS OF LAW AND ORDER

1. Claimant suffered an "accident" during the night of July 10, 2009 causing injury to the physical structure of his body in the form of spider bites. As a consequence of the traumatic skin break, Claimant developed a MRSA infection as a natural and probable consequence of the original work accident.

2. Claimant has reasonably located the accident as to time when and place where it occurred.

3. Claimant is entitled to Workers' Compensation benefits as the result of his compensable accident/injury including medical benefits incurred to date in connection with treatment of his compensable condition. Claimant is entitled to recover 100% of the invoiced amount of medical bills associated with the treatment of his compensable condition which remained unpaid by Defendants as of the date of this decision.

4. The Commission reserves for future determination the extent of Claimant's entitlement to time loss, impairment, and disability in excess of impairment.

5. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

IT IS SO ORDERED.

DATED this __18th__ day of November, 2011.

INDUSTRIAL COMMISSION

/s/
Thomas E. Limbaugh, Chairman

/s/
Thomas P. Baskin, Commissioner

/s/
R. D. Maynard, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __18th__ day of November, 2011, a true and correct copy of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail upon each of the following:

RICHARD K DREDGE
820 W BANNOCK STE 101
BOISE ID 83702

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mw

/s/