

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H304058

JONATHAN MOHLER, Employee	CLAIMANT
ROBERT A. YOUNG III (CROSS CREEK RANCH LLC), Employer	RESPONDENT
MIDWEST INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED SEPTEMBER 25, 2024

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by MICHAEL C. STILES, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On August 5, 2024, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on February 14, 2024, and an amended pre-hearing order was filed on June 19, 2024. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties at all relevant times.

3. Respondents have controverted this claim in its entirety.

At the time of the hearing the parties agreed to stipulate that claimant is entitled to payment of compensation benefits at the maximum rate in effect for 2022 of \$790.00 for total disability benefits and \$593.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant in the form of a tick bite on October 29, 2022. Alternatively, compensability of injury due to the cumulative effect of tick bites that he received during the course of his employment from January 1, 2022 until his condition became disabling in January of 2023.

2. Related medical treatment.

3. Temporary total disability benefits from January 15, 2023 through a date yet to be determined.

4. Attorney's fee.

5. Notice.

The claimant contends he sustained a compensable injury on October 29, 2022 as the result of a tick bite. Although the Commission's file shows a January 14, 2023 date of injury, said date was actually the date on which the claimant became disabled and his actual injury date should be October 29, 2022. In the alternative, claimant contends that if his condition is not due to the specific tick bite of October 29, 2022, it is due to the cumulative effect of tick bites that he received during the course of his employment from January 1, 2022 until his condition became disabling in January of 2023. Further, claimant contends that his job duties exposed him to ticks at a much greater frequency than members of the general public are exposed to ticks; therefore, even if his condition

is determined to be an occupational disease it is still compensable in the same way that histoplasmosis is still compensable for people who develop it as a result of working in the poultry industry. Claimant contends he is entitled to temporary total disability benefits from January 15, 2023 until a date yet to be determined and reasonably necessary medical treatment. In addition, claimant contends that the respondent carrier is not entitled to any credit for payments that the respondent employer has made; rather, the claimant should be ordered to reimburse the respondent employer to the extent that the claimant is awarded temporary total disability benefits, minus attorney's fees, during any period of time for which the respondent employer paid full wages while the claimant was temporarily totally disabled. Claimant contends his attorney is entitled to an appropriate attorney's fee.

The respondents contend the claimant did not sustain a compensable injury in the form of an occupational disease while employed by the respondent employer. The respondents have denied and controverted this claim in its entirety. Accordingly, the respondents have not and are not paying any benefits to or on behalf of the claimant for his supposed occupational disease injury. The claimant's physical problems and need for medical treatment, if any, are not related to his employment with the respondent employer. Rather, the claimant's physical problems and need for medical treatment, if any, stem from an unrelated and/or pre-existing condition. Also, the respondents assert A.C.A. §11-9-601, as there is no causal connection between the claimant's occupation for the respondent employer and the alleged occupational disease. Additionally, no compensation is owed "for any ordinary disease of life to which the general public is exposed." See A.C.A. §11-9-601(e)(3). The respondents had no notice of the claimant's

alleged injury until January 16, 2023. Accordingly, the respondents are not liable for any benefits whatsoever prior to January 16, 2023. Also, if it is determined the claimant is entitled to any indemnity benefits with regard to this claim, then the respondents are entitled to a credit for the respondent carrier's wage continuation payments to the claimant subsequent to January 2023.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on February 14, 2024 and contained in an amended pre-hearing order filed June 19, 2024 are hereby accepted as fact.
2. Claimant's claim for a compensation injury is an accidental injury, not an occupational disease.
3. Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury in the form of a tick bite resulting in alpha-gal allergy.
4. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.
5. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to temporary total disability benefits beginning January 14, 2023 and

continuing through a date yet to be determined.

6. Pursuant to A.C.A. §11-9-807(b), respondent is entitled to a credit for wages claimant was paid beginning January 14, 2023 and continuing through a date yet to be determined.

7. Respondent has controverted claimant's entitlement to indemnity benefits and is liable for payment of an attorney fee on those benefits.

8. Claimant's failure to provide notice prior to January 16, 2023 does not bar his entitlement to benefits. A.C.A. §11-9-701(b)(1)(B).

#### FACTUAL BACKGROUND

Claimant is a 50-year-old man who began working for respondent at Cross Creek Ranch in July 2020. Cross Creek Ranch is owned by Robert Young III, former Chairman of the Board of ArcBest Corporation. Young testified at his deposition that he is in the cattle business; buying steers that weigh 550-600 pounds, grazing them to put on additional weight, and sending them to a feed lot. His business operates under the name Cross Creek Ranch and it consists of over 1000 acres with 1400 head of cattle. The ranch is a mixture of pastures with grass and trees.

Young testified that he hired claimant as a ranch hand to tend cattle. Claimant's duties included giving vaccinations, debugging, and deflying. He was also responsible for spraying insecticides, repairing fences, building fences, bailing hay, brush hogging, and putting out fertilizer. Young testified that claimant was responsible for anything that needed to be done on the ranch.

In order for claimant to accomplish his job tasks, he was provided with a home for

he and his family to live in on the ranch. Accordingly to claimant's wife, Courtney Mohler, they moved into this home on July 26, 2020.

Claimant testified that while taking care of the cattle and livestock was his main priority, he had many other duties such as repairing fences. Claimant testified that fences frequently get damaged and it is important that repairs be made as soon as possible to prevent the cattle from getting out of the pasture. Testimony from claimant, Courtney Mohler, and Robert Young III is that ticks are prevalent on Cross Creek Ranch. Courtney testified that ticks are abundant and that she had received tick bites while living on the ranch. Claimant testified that ticks are "thick" on the ranch. Likewise, Young testified that there are ticks present on the ranch and that when his children were younger and they would go to the ranch he and his wife would have to go over their children with a "fine-tooth comb" to make sure they had not been bitten by ticks.

Claimant testified that he typically preformed tick checks at night before bedtime or showering. On October 29, 2022, claimant was performing a tick check and discovered a tick on the back side of his knee. Admittedly, claimant did not recall the specific date on his own. However, he did remember that on the day the tick was found he had repaired a fence and taken a picture of a nearby tree that had been rubbed on by a deer. The photo shows that it was taken on October 29, 2022. Claimant also testified that he has been bitten multiple times by ticks while working on Cross Creek Ranch.

Claimant testified that before October 2022 he had never thrown up without warning. However, in early November 2022 he vomitted without warning while taking his kids deer hunting on the ranch. Courtney Mohler testified that she began noticing claimant having new health issues in December 2022. She testified that on the night of

their daughter's birthday she noticed that claimant's face and eyes were swollen and that his color was not normal. She stated that claimant had difficulty eating that night and was not able to participate in the birthday party.

On the night of January 14, 2023, Courtney took claimant to the emergency room due to uncontrollable vomiting; stomach pain; and irritation in the throat and esophagus. Claimant was struggling to stay upright or get out of bed. She testified that claimant had never had these issues before October 2022.

The emergency room report from Washington Regional Medical Center dated January 14, 2023 indicates that claimant's complaints included dizziness, low blood pressure, nausea, vomiting, and abdominal pain. An EKG did not reveal a cause for the symptoms; a CT of the abdomen showed no acute intra-abdominal pathology; and a chest x-ray showed no acute pathology. Claimant was diagnosed with dizziness; nausea and vomiting; and abdominal pain. He was given medication for nausea and instructed to receive follow-up care from his primary care physician.

On January 26, 2023, claimant was seen by his primary care physician, Dr. Jantzen Slater, who ordered various lab tests. One of those lab tests was for alpha-gal. In a report dated February 7, 2023, Dr. Slater stated that the lab results were positive for alpha-gal, shrimp, and wheat. Since that time claimant has continued to be treated by Dr. Slater for various conditions; including alpha-gal syndrome. Alpha-gal syndrome is triggered by tick bites. His treatment has primarily included the use of medications and avoidance of various foods. In addition to Dr. Slater, claimant has also been evaluated by Dr. Tina Merritt at the Allergy Asthma Clinic of Northwest Arkansas and by Dr. Scott Lucchese, neurologist. Both Drs. Merritt and Lucchese have diagnosed claimant with

alpha-gal allergy.

Claimant has not worked for respondent since his initial emergency room visit on January 14, 2023. Respondent has continued to pay claimant his regular wages (including an increase) throughout this period of time. Respondent has also continued to allow claimant and his family to live in the home on Cross Creek Ranch.

Claimant has filed this claim contending that he suffered a compensable injury as a result of the tick bite on October 29, 2022 which resulted in a diagnosis of alpha-gal syndrome. He requests payment of related medical treatment, temporary total disability benefits, and a controverted attorney fee.

### ADJUDICATION

The first issue for consideration is whether claimant's claim of an injury in the form of a tick bite and the subsequent diagnosis of alpha-gal syndrome is an occupational disease or an accidental injury. Claimant contends that it is an occupational disease. Occupational disease injuries are governed by the provisions of A.C.A. §11-9-601 *et seq.* A.C.A. §11-9-601 does not define the distinction between "accidental injury" and "disease", but a widely accepted distinction is that occupational diseases are generally gradual rather than sudden in onset. *Johnson v. Democrat Printing and Lithograph*, 57 Ark. App. 274, 944 S.W. 2d 138 (1997); *Hancock v. Modern Indus. Laundry*, 46 Ark. App. 186, 878 S.W. 2d 416 (1994).

After reviewing the evidence presented, I do not find that claimant's injury is governed by the occupational disease provisions of A.C.A. §11-9-601 *et seq.* Alpha-gal syndrome is:



[A]n allergic reaction to a type of sugar community called alpha-gal. It is found in the meat and organ meats of mammals, such as cows, pigs, and sheep. It may also

be found in products that come from animals, such as gelatin, medicines, medicine capsules, some milk products, vaccines, and cosmetics. (Washington Regional Medical Center patient education materials, Page 95 of Claimant's Exhibit 1.)

This same document indicates that alpha-gal syndrome causes an allergic reaction that can be immediate or delayed for several hours, and range from mild to severe. This material states the cause of alpha-gal syndrome as follows:

This allergy is first triggered by a tick bite from a lone star or blackleg tick. These ticks bite animals, such as cows, pigs, or sheep, and pick up the alpha-gal sugar from their blood. If this same tick bites you, it may cause your body's defense system (immune system) to produce antibodies to alpha-gal and cause the allergic reaction.

Dr. Slater confirmed that claimant developed an alpha-gal allergy as a result of a tick bite in a letter dated August 17, 2023. As respondent correctly points out in its brief, alpha-gal syndrome is not a disease but rather an allergy. More importantly, claimant's initial contention is that he contracted alpha-gal syndrome through a tick bite that occurred on October 29, 2022 as a result of a specific incident. This would be a sudden onset and not a gradual onset. [I do note that claimant alternatively contends that he suffered a compensable injury due to cumulative tick bites. For reasons to be discussed, I find that he has proven a compensable injury as a result of a specific incident.] As previously noted, occupational diseases are generally gradual in onset rather than sudden in onset.

*Johnson, supra.*

Based on the foregoing, I find that claimant's claim is for an accidental injury rather than an occupational disease.

As noted above, it is claimant's initial contention that he contracted alpha-gal syndrome as a result of a tick bite that occurred on October 29, 2022. This is a claim for a specific injury, identifiable by time and place of occurrence. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proof. First, I find that claimant has proven by a preponderance of the evidence that his injury arose out of and in the course of his employment and that it was caused by a specific incident identifiable by time and place of occurrence.

As previously discussed, claimant testified that he typically performed tick checks at night before bedtime or showering. Through a photo he had taken while repairing a fence on October 29, 2022, claimant was able to establish this date as the day he removed a tick from behind his knee area. It was in early November, shortly after this tick bite, that claimant began to have issues of vomiting without warning.

In response to claimant's contention and testimony, respondent states that

claimant cannot prove that he was bitten by a tick while in the course of his employment. Respondent contends that claimant does not know what he was doing or where he was bitten by a tick; therefore, he cannot prove that he was performing “employment services”.

In its brief, respondent frequently refers to claimant as an “on call employee” who was performing job duties during periods of the day, but was also engaged in personal activities such as taking his children hunting on the ranch. Respondent also notes that claimant generally liked to end his workday at 3:00 p.m. and that he and another ranch hand would attempt to alternate weekends off. Respondent contends that while claimant was frequently engaged in employment services while on the ranch, he was also engaged in personal activities and at those times was not performing employment services. Since he does not know specifically what he was doing when he was bitten by the tick, respondent contends that claimant cannot meet his burden of proof.

I find that claimant was a “resident employee” and that his claim for compensation benefits is governed by the Arkansas Supreme Court decision in *Jivan v. Econ. Inn & Suites*, 370 Ark. 414, 260 S.W. 3d 281 (2007). In that case, Nimisha Jivan was employed as an assistant manager at the Economy Inn in Hope. She and her husband, the manager of the Economy Inn, lived in a room provided by the hotel and carried out their job responsibilities on the premises. On February 17, 2003, Nimisha was off duty. She was in the process of changing her clothes in the bathroom of her hotel room to go to the gym when a fire broke out. Unfortunately, Nimisha died as a result of smoke inhalation.

Nimisha’s husband and two minor children filed a workers’ compensation claim. Notably, the parties stipulated that Nimisha and her husband were provided a room at the hotel in order to live on the premises and carry out their responsibilities. The parties

also stipulated that on February 17, 2003, Nimisha was off duty and was in the bathroom of her hotel room changing clothes to go to the gym to exercise. Finally, the parties stipulated that Nimisha and her husband were considered on-call to address any hotel related issues.

The question before the Court was whether Nimisha was performing “employment services” at the time of her death. The Court first noted that an employee is performing employment services if they are doing something that is generally required by their employer. *Wallace v. West Fraser, Inc.*, 365 Ark. 68, 225 S.W. 3d 361 (2006). The Court then discussed its prior decision in *Deffenbaugh Indus. v. Angus*, 313 Ark. 100, 852 S.W. 2d 804 (1993). Angus was injured when a mobile home where he resided on the premises of his employer was destroyed by a tornado. The Court found that because Angus was continually on duty he qualified as a residential employee and “the entire period of his presence on the premises is deemed included in the course of employment.” The Court also noted that under the doctrine of increased risk, injuries are compensable if the employment exposed the employee to a greater degree of risk than other members of the general public in the same vicinity. Under this theory:

[T]he claimant must prove only that the conditions of her employment, or the place where her employment required her to be, intensified the risk of injury “due to extraordinary natural causes.”

*Deffenbaugh* was decided before Act 796 of 1993 and the *Jivan* court noted that it did not preclude the application of the residential-employee rule. The Court also noted that any interpretation of a statute becomes part of the statute. The Court then found the following with respect to Nimisha:

Based upon these stipulated facts, Nimisha, like Angus in *Deffenbaugh*, resided on the employer's premises at the time of her fatal injury. Employing an increased-risk analysis, Nimisha was expected to reside on the premises and, as a residential employee of the hotel, the condition of living at the hotel "intensified the risk of injury due to extraordinary natural causes." [citation omitted.] That is to say, her presence on the premises during the fire exposed her to a greater degree of risk than someone who did not live on the premises. In fact, the parties stipulated that Nimisha was on call twenty-four hours per day, and while living on the premises, she was to carry out her responsibilities as an assistant manager of the hotel by being available for work duties at all times. Thus, Nimisha indirectly advanced her employer's interests, even while remaining on the premises during the fire.

I find that the decision in *Jivan* applies to this claimant. Claimant was provided a home on the ranch for he and his family to live in and was expected to be available twenty-four hours per day. Young specifically testified:

A I wanted him on the ranch. Cattle lived there 24 hours a day and he is responsible for the cattle. So if a fence broke and they were out on a county highway, he would be there to get them up and get them in.

Q So would it be correct to say that he was basically a 24-hour-a-day employee?

A He was available 24 hours.

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Q Mr. Stiles asked about Mr. Mohler hunting on the ranch property sometimes. Even if he is doing personal hunting, if he is on the property, is he considered to be on call as an employee? I mean if something happened on the ranch while he was hunting, would he be expected to take care of it? For example, if one of these bobcats that we have been talking about attacked some of your livestock, would he be expected to intervene?

A Yes.

Q So if he is physically on the property, he is on call as far as you are concerned?

A He is supposed to act like an owner.

Q That is within the scope of his and within the scope of your expectation as an employer for him to perform employment services if he is on the property; is that right?

A That is correct. (Emphasis added.)

Claimant's living on the ranch exposed him to a greater risk than someone who did not live on the premises. In other words, claimant was not like most employees who go to work and then go to their personal home; instead, he was required by his employer to live on the ranch and be available twenty-four hours a day. This increased his risk to exposure of ticks which according to the testimony of the witnesses were prevalent on the ranch. Accordingly, even if claimant was bitten while performing an activity other than his normal work activity, his risk of injury was greater because he lived on the ranch. Thus, claimant indirectly advanced his employer's interest when he was bitten by a tick on the ranch.

I also find claimant's testimony credible regarding his finding of the tick on October 29, 2022, after spending a portion of the day repairing fencing. Claimant testified that he was able to relate the tick bite to that day because of a photo on his phone that he had taken of a tree that day while repairing the fence.

In its brief, respondent contends that claimant did not save the tick and did not have it biopsied for alpha-gal. It is not reasonable that a person in claimant's position

would save a tick for a biopsy in the event that they later become sick from alpha-gal. There is no such requirement under the law. Claimant is only required to meet his burden of proof by a preponderance of the evidence. Based on a totality of the evidence, I find that claimant has proven that the tick bite of October 29, 2022 arose out of and in the course of his employment and that it was caused by a specific incident, identifiable by time and place of occurrence.

I also find that claimant has proven that the tick bite caused internal harm to his body that required medical services or resulted in disability and that he has offered medical evidence supported by objective findings establishing the injury. When claimant began having uncontrolled vomiting he was taken to the emergency room on January 14, 2023, and referred to his primary care physician, Dr. Slater. Dr. Slater ordered various lab tests which included an alpha-gal panel which was positive for alpha-gal syndrome. As previously noted, alpha-gal is transmitted by tick bites.

In a letter dated August 17, 2023, Dr. Slater stated that claimant developed alpha-gal as a result of being bitten by a tick at work.

Unfortunately, during his work, he was bitten by a tick. Subsequent medical evaluation and tests have confirmed that Mr. Mohler has developed an alpha-gal allergy as a direct result of the tick bite.

Since his diagnosis claimant has continued to be treated for his symptoms by Dr. Slater and Dr. Merritt. The positive lab test for alpha-gal is an objective finding establishing an injury. Therefore, I find that the remaining elements of compensability have been proven.

In reaching this decision I note that respondent has offered a report from Dr.

Joshua Kennedy, a physician at UAMS specializing in allergy and immunology. Dr. Kennedy acknowledges that claimant has tested positive for alpha-gal, but also opines that other diagnoses for claimant's complaints should be considered. Based on his opinion, respondent contends that alpha-gal syndrome is not the "major cause" of claimant's disability or need for medical treatment. However, an employee is not required to prove that his compensable injury is the major cause for the need for treatment unless the employee is seeking permanent benefits; when the employee has suffered a specific injury and is seeking only medical benefits and temporary total disability, the major cause analysis is not applicable and the employee need only show that the compensable injury was a factor in the need for additional medical treatment. *Jackson v. O'Reilly Auto, Inc.*, 2013 Ark. App. 755.

In summary, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury in the form of a tick bite on October 29, 2022, which resulted in alpha-gal syndrome.

Having proven that he suffered a compensable injury, respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's alpha-gal syndrome.

The next issue for consideration involves claimant's request for temporary total disability benefits. Claimant has not worked for respondent or any other employer since going to the emergency room on January 14, 2023. Claimant's injury is an unscheduled injury; therefore, in order to be entitled to temporary total disability benefits, claimant has the burden of proving by a preponderance of the evidence that he remains within his healing period and that he suffers a total incapacity to earn wages. *Arkansas State*



*Highway & Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981).

I find that claimant has met his burden of proof. The medical evidence clearly indicates that claimant remains within his healing period for his alpha-gal allergy as his treating physicians attempt to treat claimant for his condition and resolve his symptoms. Based upon the medical evidence I find that claimant remains within his healing period.

I also find that claimant has proven that he suffers a total incapacity to earn wages as a result of his compensable injury. First, I note that claimant testified that he is currently unable to perform his work for respondent and has not been able to do so since January 14, 2023. I find claimant's testimony to be credible. Claimant presented as a credible witness at the hearing and I find his testimony regarding his inability to work believable. With regard to claimant's integrity, I note the testimony of Penny Ring, the office manager for respondent. On cross examination she was asked about claimant's trustworthiness.

Q Do you have an opinion about his trustworthiness?

A I don't have any reason not to trust him. He has been an exemplary employee and full of integrity.

I also note that Dr. Slater has opined that claimant is incapable of working. In his letter of August 17, 2023 he stated:

This [alpha-gal allergy as a result of a tick bite at work] is thought to be at the root of his current symptoms which have rendered him essentially incapacitated to his previous and presumably any occupation.

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This condition poses a significant challenge to Mr. Mohler's quality of life and his ability to perform his

job effectively. He now requires constant vigilance and adjustments to his lifestyle to avoid potential triggers.

More recently, in a letter dated June 17, 2024, Dr. Slater stated:

I am writing on behalf of Jonathan Mohler who as you know is undergoing medical treatment for a work-related injury. Although his treatment has improved his symptoms, he remains unable to work due to his condition. (Emphasis added.)

Based upon claimant's testimony and the opinion of Dr. Slater, I find that claimant has proven by a preponderance of the evidence that he has been temporarily totally disabled as a result of his compensable injury since January 14, 2023.

Although I have found that claimant is temporarily totally disabled as a result of his compensable injury, respondent is not liable for payment of any benefits at this time.

A.C.A. §11-9-807(b) states:

If the injured employee receives full wages during disability, he or she shall not be entitled to compensation during the period.

The parties agree that since the time of claimant's disability respondent has continued to pay him his full wages. In addition, claimant has been permitted to continue living in his home on the ranch and respondent has continued to pay for claimant's vehicle, health insurance, and utilities.

Claimant contends that payment of his full wages does not entitle respondent to a credit because the payment was not intended by the parties as an advance payment of compensation. In support of that contention, claimant cites *Varnell v. Union Carbine*, 29

Ark. App. 185, 779 S.W. 2d 542 (1989). However, most recently, the Arkansas Court of Appeals addressed A.C.A. §11-9-807 and this issue in *Advanced Portable X-Ray, LLC v. Parker*, 2014 Ark. App. 548, 444 S.W. 3d 398. In that decision the Court stated:

Each of the cases cited by the Commission in support of its opinion are distinguishable from the present appeal. In both *Lion Oil* and *Looney, supra*, our supreme court was called to interpret what is now codified at *subsection(b)*, and as held in *Looney*, it interpreted the statute to mean that excess wages over the TTD rate are not to be credited to the employer. Those cases do not stand for the proposition that when an employer pays an employee “full wages” during a period of disability, the employee is entitled to both full wages and TTD. To construe the statute in that manner would effectively void *subsection(b)*.

To clarify, when an employer pays an employee “full wages” during a period of disability and the employee is subsequently awarded TTD benefits for that period, the employer is entitled to a credit under *subsection (b)* for the amounts paid to the employee that are commensurate with the employee’s TTD rate; the employer is not, however, entitled to a credit for amounts paid in excess of the TTD rate.

Based upon the decision in *Parker*, I find that respondent is entitled to a credit pursuant to A.C.A. §11-9-807(b) for the amounts paid to claimant that are commensurate with his temporary total disability rate; respondent is not entitled to a credit for amounts paid in excess of the temporary total disability rate.

Finally, I find that respondent has controverted claimant’s entitlement to compensation benefits. Claimant has been temporarily totally disabled since January 14, 2023, and respondent is entitled to a credit for reasons discussed herein. Therefore, at this point no indemnity benefits are being paid to the claimant. Since no benefits are

being paid to claimant, there are no indemnity benefits from which to withhold his 12 ½% portion of an attorney fee. In the event indemnity benefits are paid to claimant in the future, claimant's portion of the attorney fee should be withheld from those amounts and forwarded to Mr. Walker. Respondent is liable for paying its portion of the attorney fee to Mr. Walker. Although it has been given a credit for full wages paid to claimant, those benefits were controverted and have been awarded.

The final issue for consideration involves notice. Respondent contends that it did not have notice of the claimant's injury until January 16, 2023; therefore, it is not liable for payment of any benefits prior to January 16, 2023. As previously discussed, claimant sought medical treatment from the emergency room on January 14, 2023, at which time he was diagnosed with dizziness; nausea and vomiting; and abdominal pain. He was given medication and instructed to receive follow-up treatment from his primary care physician. This is the only treatment claimant received before January 16, 2023.

When the claimant saw his primary care physician on January 26, 2023, Dr. Slater ordered various lab tests which included an alpha-gal panel. It was only after this test returned positive that it became apparent that claimant's symptoms were related to a tick bite. Pursuant to A.C.A. §11-9-701(b)(1)(B) failure to give notice does not bar a claim:

If the employee had no knowledge that the condition or disease arose out of and in the course of the employment.”

I find that claimant had no knowledge that his condition or disease arose out of and in the course of his employment until after the lab results were performed and it was determined that the cause of claimant's alpha-gal allergy was the result of a tick bite. This

occurred after January 16, 2023. Therefore, claimant's failure to provide notice before January 16, 2023 is excused pursuant to A.C.A. §11-9-701(b)(1)(B).

ORDER

Claimant's claim for a compensable injury is a claim for an accidental injury, not an occupational disease. I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury in the form of a tick bite which resulted in alpha-gal syndrome on October 29, 2022. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. Claimant is entitled to temporary total disability benefits beginning January 14, 2023 and continuing through a date yet to be determined. Because respondent has continued to pay claimant his full wages, respondent is entitled to a credit for those full wages pursuant to A.C.A. §11-9-807(b). While claimant is not required to pay his portion of an attorney fee to Mr. Walker, respondent has controverted claimant's entitlement to indemnity benefits and as such is liable for payment of an appropriate fee.

All sums herein accrued are payable in a lump sum and without discount.

Respondent is liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$1,140.25.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE