

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
AWCC NO. F211073**

RAYMOND HICKSON, EMPLOYEE **CLAIMANT**

VS.

SOUTHER REFRIGERATED TRANSPORT, EMPLOYER **RESPONDENT**

LIBERTY MUTUAL INSURANCE CO., CARRIER **RESPONDENT**

OPINION FILED SEPTEMBER 9, 2003

Hearing held July 24, 2003, in Texarkana, Arkansas, before *ADMINISTRATIVE LAW JUDGE KAREN McKINNEY*.

Claimant is represented by Mr. Gregory R. Giles, Attorney at Law, Post Office Box 2631, Texarkana Arkansas 75504.

Respondents are represented by Mr. Mike Ryburn, Attorney at Law, 10825 Financial Centre Pkwy., Suite 136, Little Rock, AR 72211.

STATEMENT OF THE CASE

The above-styled claim came on for a hearing in Texarkana, Arkansas, on July 24, 2003. A prehearing telephone conference was held on this claim on June 23, 2003, with a Prehearing Conference Order filed on June 24, 2003. The Prehearing Conference Order was marked as Commission's Exhibit No. 1, and introduced into evidence without objection. Pursuant to the Prehearing Conference Order, the parties agreed upon the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim;
2. The employee-employer-carrier relationship existed between the parties on September 18, 2002;
3. The respondents have not paid any benefits on this claim;

4. The parties anticipate stipulating to the claimant's average weekly wage and compensation rates.

With regard to the claimant's wages, the parties agreed to stipulate at the beginning of the hearing that the claimant earned an average weekly wage sufficient to entitle the claimant to a temporary total disability rate of \$298.00 per week.

During the prehearing telephone conference the parties agreed to limit the issues to:

1. Whether claimant sustained a compensable hernia on September 18, 2002, for which he is entitled to indemnity and medical benefits;
2. Whether claimant is entitled to temporary total disability benefits from September 19, 2002, through November 19, 2002;
3. Controversion and attorney's fees.

At the beginning of the hearing, claimant raised estoppel as an affirmative defense should the claim be denied. In this regard claimant contends that certain medical treatment was pre-authorized by respondent and should therefore, still be the responsibility of respondents even if the claim is not found compensable. As this issue was not raised prior to the hearing, claimant was not allowed to go forward with this issue; however, the claimant was specifically allowed to reserve this issue for a latter date.

With regard to the issue litigated at the hearing, claimant contends that he sustained a compensable hernia injury on September 18, 2002 and that he is entitled to temporary total disability benefits from September 20, 2002, through November 19, 2002. Claimant also contends entitlement to an attorney's fee on the indemnity benefits, and specifically reserves the issue of an attorney's fee on the medical benefits.

Respondents contend that the claimant did not sustain a compensable hernia.

From a review of the record as a whole, to include the medical reports, documents, and all other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and 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 the prehearing telephone conference conducted on June 23, 2003, and contained in the Prehearing Order filed on June 24, 2003, are hereby accepted as fact.

2. Claimant earned an average weekly wage sufficient to entitle him to a temporary total disability rate of \$298.00 per week, should the claim be found compensable.

3. Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable hernia injury.

CONCLUSION

Claimant was employed by respondent as a truck driver. Claimant contends that he sustained a hernia injury on September 18, 2002, when he was allegedly struck in the groin by a jack handle. Claimant described his injury as occurring when he was using the jack handle to dolly the trailer down and he turned his head to see who had tapped him on the shoulder when in the process he let go of the jack handle and it “spun and hit me right in the groin right here.” Claimant explained that as he was dollying down the trailer, and just at the moment he let go of the handle, someone had driven a forklift into the trailer which took the pressure off of the dolly jacks causing it to spin. Claimant explained that after he was struck in the groin, he sat down for a few minutes to see if the pain would ease. After signing the bill for the goods loaded on the trailer, claimant says he went to the bathroom and observed a “pretty good size little old red mark...” Claimant did not observe any swelling or bleeding.

Claimant testified that this incident occurred around 5:00 p.m. and he reported it to the night dispatcher before the dispatcher went off duty around 7:00 a.m. According to the claimant, after he reported the incident to the night dispatcher, the dispatcher arranged for the claimant to be routed home. Claimant was advised to drive to a drop yard in Zachary, Louisiana, where he was to trade

trailers with another driver. Claimant was then to take the empty trailer to the paper mill in Zachary for loading. It was after loading this second trailer, and refueling that the claimant noticed swelling in his groin for the first time. Claimant did not observe any bruising, only a red swollen spot.

Claimant arrived in Ashdown, Arkansas, on Friday, September 20, 2002, around 5:30 p.m. As the office staff had gone for the day, claimant decided to wait until Monday to talk to Marsha in the respondent's insurance office. Claimant was unable to wait until Monday for medical treatment. On Saturday evening, claimant sought medical attention at Wadley Medical Center.

The Emergency Room records reveal that the claimant was seen at 6:50 p.m. on Saturday, September 21, 2002, with chief complaints of "HEMPOTYSIS, (sic) R GROIN SWELLING" The nurses assessment and notes further state; "PT STS FELT SICK TO STOMACH, AND COUGHED AND SPIT UP SOME BLOOD. ® groin hurts when he coughs. KS" Claimant was sent to x-ray, for an x-ray of his lungs at 8:00 p.m. The x-ray did not reveal any evidence of acute cardiopulmonary disease. Claimant was examined by the physician at 8:20 p.m. The physician noted a chief complaint of right groin pain that started when "lifting a [illegible] on his truck." The doctor further noted that the claimant complained of cough "č [illegible] of blood x 1." Claimant was diagnosed with an inguinal hernia, prescribed some medication, and discharged home with instructions to follow-up with a surgeon.

On Monday, September 23, 2002, claimant reported a work related injury to Marsha with his employer. Claimant was instructed to seek medical treatment from the company doctor, Dr. Kevin Kleinschmidt, and an appointment was scheduled for the claimant by Marsha. Claimant was seen by Dr. Kleinschmidt that same afternoon. Claimant advised Dr. Kleinschmidt that he injured his groin on September 18, 2002, when a trailer handle hit his groin.

On Wednesday, September 25, 2002, claimant was seen by Dr. A. D. Smith, the surgeon to whom he had been referred by the emergency room staff at Wadley Hospital. Dr. Smith noted the following:

Mr. Hickson has a right inguinal hernia. He has had it about 2 weeks. He is a trucker and says some panel or something hit him in the groin and it has been sore ever since. He can hardly work because of it. He thinks that caused it, but this is a right inguinal hernia. It is reducible. It is quite tender. It is possible that it has been there longer than he thinks and he bruised it. At any rate, it needs to be repaired. He smokes.

Claimant underwent a hernia repair surgery on October 3, 2002, performed by Dr. Smith. In a post operative follow-up report dated October 9, 2002, Dr. Smith noted that the claimant was doing satisfactory and that he was to go back to work on October 28th.

Dr. Kleinschmidt authored an undated letter addressed to Marsha Stewart in which he offered his opinion regarding the cause of claimant's hernia. In this regard, Dr. Kleinschmidt stated:

This is a letter in reference to Raymond Hickson who has been seen under your workman's comp policy as a claim due to an injury that he sustained by his account on 9/18/02 from a trailer handle that apparently flipped and struck him in the right groin causing him to have pain and swelling immediately thereafter. He states that he has had pain and swelling ever since and presented to our clinic on 9/23/02 and was noted at that time to have a wide inguinal hernia, which was easily reducible. He had no other complaints at that time as far as etiology of the hernia, but on exam was noted to have no contusions or hematomas that would substantiate a blunt trauma as etiology. Upon your request other records were provided from Wadley Regional Medical Center where he apparently had been seen 2 days prior to our visit at the clinic on 9/21/02. Upon reviewing the ER chart, his complaint was that he had been coughing and developed some pain and swelling suddenly thereafter in his right groin. There was no mention of blunt trauma as a cause of his pain at that time in the doctor's notes. Also, there was no mention of any contusion, swelling, or bruising at that time that would substantiate blunt trauma. However, the coughing with the development of a hernia, certainly would more indicate that his hernia could have been from the coughing episodes that were quite intense at that time.

From the information provided, one would have to suspect that the hernia probably was more likely from the cough than exactly blunt trauma from a trailer hitch popping into the right groin area. Especially since the patient was not seen initially on that day of the alleged injury on 9/18/02. In any case, the patient has been referred to a surgeon for evaluation as far as his hernia. The origin of the hernia seems to be more likely due to the cough than the alleged injury that occurred on 9/18/02.

Dr. Smith completed a Physician's Workers' Compensation Questionnaire prepared by claimant's attorney. This questionnaire asked Dr. Smith to assume that the claimant suffered an injury to his groin on September 18, 2002, when the jack handle on his trailer spun and forcefully struck the claimant in his right groin area. Dr. Smith was further asked to assume that prior to September 18, 2002, the claimant had never felt a bump in his groin or had severe pain in his groin. Dr. Smith was not asked to assume any facts related to claimant's smoking, coughing, or coughing up blood. On the questionnaire, Dr. Smith noted that he observed swelling, but did not observe any bruising on the claimant. Dr. Smith further noted on this questionnaire that the claimant's symptoms were related to his work activities and that the work related accident was the major cause of the claimant's need for treatment.

On November 14, 2002, Dr. Smith completed a medical review form which outlines claimant's job functions stating that the claimant may perform all the functions of his job as a truck driver without restrictions.

Respondents offered the testimony of Cliff Brown, the respondent-employer's claims manager for risk management. Mr. Brown described the jack handle and its operation. Mr. Brown explained that the jack handle which supposedly struck the claimant operates off of a two speed gear system. This gear system locks into place whenever it stops due to the strength and weight of the gear. In this regard, Mr. Brown testified:

“A. [Mr. Brown] Okay, the landing gear themselves, yes. But the crank system that I’m talking about is all but an independent. It’s just a gear that drives it up and down. And it locks into position wherever you stop at because the strength and the weight of the gear.

“Q. [Mr. Ryburn] So if the handle was at the top when you stopped, it is going to stay at the top of its arc?

“A. That’s correct. Unless like I said some small slack. If there would be small slack, but that would be it. But there’s nothing as far as the trailer itself causing movement. In other words, if you stopped it here and there was a slack in the gear, it may roll back a gear, but that’s all its going to do.

“Q. Isn’t it such that you move that handle. . . . Isn’t it geared so that when you move that handle you have to move it a lot of times around for that trailer to move at all?

“A. Yes, sir, that’s why I say it’s a dual speed.

“Q. So it would be a reverse situation for the gears to make that handle move. The handle to make the gears to move?

“A. The handle to make the gears move. I’ve never seen the gears make the handle move. [T56-57]

Ark. Code Ann. § 11-9-523(a) provides:

- (1) That the occurrence of the hernia immediately followed as the result of sudden effort, severe strain, or application of force directly to the abdominal wall;
- (2) that there was severe pain in the hernial region;
- (3) that the pain caused the employee to cease work immediately;

- (4) that notice of the occurrence was given to the employer within forty-eight (48) hours thereafter;
- (5) that the physical distress following the occurrence of the hernia was such as to require the attendance of a licensed physician within seventy-two (72) hours after the occurrence.

Moreover, A.C.A. § 11-9-102(16)(B) provides: "Medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty."

In my opinion, I cannot find that the claimant has established by a preponderance of the evidence that he sustained a hernia "as the result of sudden effort, severe strain, or application of force directly to the abdominal wall." While claimant testified that he was struck in the groin area by the jack handle on his trailer, I cannot find that a preponderance of the evidence establishes that this incident caused claimant's hernia. As noted by Dr. Kleinschmidt there was no evidence of bruising to support claimant's claim of a blunt trauma to the groin area. The Emergency Room records reveal complaints of "hemoptysis" (sic). Hemoptysis is defined in Dorland's Illustrated Medical Dictionary, 26th edition as "the expectoration of blood or of blood-stained sputum." The chief complaint listed by the emergency room nurse was hemoptysis, and right groin pain. Moreover, the nurse first noted claimant's symptoms as "felt sick to stomach, and coughed and spit up some blood." The second symptom listed was of right groin pain with coughing. Given the order of the claimant's complaints and symptoms as listed by

the emergency room nurse, I am inclined to believe that this was the order in which claimant presented his complaints, rather than the claimant's testimony that this was just "any other complaint" which the nurse prodded out of him. It was not until an x-ray ruled out a pulmonary problem that the claimant first mentioned to the emergency room personnel that his groin pain started after lifting something on his truck. It is important to note that the claimant never provided the emergency room personnel with a history of being struck in the groin by the jack handle.

Furthermore, when the claimant was first examined by Dr. Smith, Dr. Smith questioned claimant's history of how the hernia occurred. In this regard, Dr. Smith noted: "He thinks that caused it, but this is a right inguinal hernia. It is reducible. It is quite tender. It is possible that it has been there longer than he thinks and he bruised it." Although Dr. Smith completed the physician's questionnaire prepared by claimant's attorney and indicated on this form that the claimant's symptoms were caused by his work-related incident, Dr. Smith was never advised of the emergency room records regarding claimant coughing up blood. The Commission has the authority to accept or reject medical opinion and the authority to determine its medical soundness and probative force. Green Bay Packing v. Bartlett, 67 Ark. App. 332, 999 S.W.2d 692 (1999). I do not find Dr. Smith's opinion as set forth in the physician questionnaire to be entitled to any weight as there is no evidence that Dr. Smith was ever advised of claimant's history of coughing and spitting up blood.

Moreover, Dr. Smith was only asked to assume a limited set of facts in this questionnaire.

Dr. Kleinschmidt specifically stated that the hernia was probably more likely caused from the cough than exactly blunt trauma from a trailer hitch popping into the claimant's right groin area. Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B). Where a medical opinion is sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of the injury, that opinion is stated within a reasonable degree of medical certainty. Huffy Service First v. Ledbetter, 76 Ark. App. 533, 69 S.W.3d 449 (2002), citing Howell v. Scroll Tech., 343 Ark. 297, 35 S.W. 3d 300 (2001). While Dr. Kleinschmidt's medical opinion speaks in terms of probabilities, I find his causation opinion more persuasive than Dr. Smith's causation opinion as set forth in the questionnaire as Dr. Kleinschmidt has demonstrated a greater knowledge of all the facts surrounding the claimant's complaints and need for medical treatment. In addition, I am persuaded by Dr. Smith's initial examination report of the claimant in which he questioned claimant's account of how the inguinal hernia developed, and not his subsequent opinion.

Accordingly, after weighing all the evidence I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable hernia injury as the result of sudden effort, severe strain, or application of force

directly to the abdominal wall. While claimant described such an event, the emergency room medical records, Dr. Smith's initial question regarding causation, and Dr. Kleinschmidt's opinion regarding causation persuade me to find that the claimant did not develop a hernia from being struck by the jack handle. Therefore, I find that the claimant has failed to prove the compensability of his claim.

AWARD

Claimant has failed to prove that he sustained a compensable hernia. Accordingly, this claim is hereby denied. Claimant maintains a cause of action for estoppel to deny payment of medical benefits which were previously authorized by the respondents.

IT IS SO ORDERED.

HON. KAREN McKINNEY
Administrative Law Judge