

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302919

MAUREEN C. WALLACE, EMPLOYEE	CLAIMANT
CONVACARE, INC., EMPLOYER	RESPONDENT
TRAVELERS INSURANCE CO., INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 17, 2003

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, at Searcy, White County, Arkansas.

The claimant was PRO SE.

The respondents were represented by MR. PHILLIP CUFFMAN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on September 17, 2003 in Searcy, Arkansas. A prehearing order was entered in this case on or about July 31, 2003. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time.

The following stipulations were submitted by the parties and are hereby accepted:

1. The employer-employee-[carrier] relationship existed on or about March 6, 2003.

2. The respondents stipulate that the claimant's compensation rate is \$202.00 per week.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant can prove each of the five requirements to establish a compensable hernia injury under Ark. Code Ann. § 11-9-523(a).

The record consists of the transcript of the September 17, 2003 hearing, with exhibits contained therein.

DISCUSSION

The claimant asserts that she sustained a work related femoral hernia on March 6, 2003 which caused her need for emergency surgery in the early morning hours of March 7, 2003. The claimant described her relevant activities on March 6, 2003 at work as follows:

Q Okay. And I need to go over with you again what precisely you were doing with the whirlpool when you felt this sensation the first time- -it gradually began. What activity- -were you lifting? Were you pushing? Were you pulling?

A All of that. Because you have to get the chair- -you have to take it to a room- -for a person who can't walk, we would take the big- -it's a big chair and it's on rollers. These long rollers and anyway, you have to take it into their room and you lift them onto the

chair. I did have help. I wasn't by myself, but you have to put the pay- -the resident on the chair and then take the chair back out of the room and back to the whirlpool room.

Q But you don't associate- -if I understand your testimony correctly, and I'm not trying to put words in your mouth, but you don't seem to associate this onset of pain at your upper leg with a particular incident; with a particular point- -at some point you're lifting the patient up and you go, "Ow, that really hurts," or, you're pushing the chair and- -

A No. It didn't happen like that. The only thing I could say was you know, after doing the six showers that day and then having to use that whirlpool chair too, it didn't- -it didn't come to me all of a sudden.

Q When would you say was the first time that you felt a severe pain?

A Severe pain?

Q Yes.

A Was after I got home.

Q After you got home?

A Yeah. Probably around four.

Q Okay. Did the pain that you felt while you were working with the shower, did that ever cause you to quit working at all or did you just work through it the whole time?

A No. Because really leg pain is something that- -it happens just about every day.

In order to prove that a hernia is compensable, a claimant must satisfy all the requirements of Ark. Code Ann. § 11-9-523(a) which provides:

- (1) That the occurrence of the hernia immediately followed as a result of sudden effort, severe strain, or the application of force 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; and
- (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.

In the present case, if the claimant's hernia did in fact occur at work on March 6, 2003, then I note that the claimant has established the fifth requirement-that physical distress following the occurrence of the hernia was such as to require the attendance of the physician within seventy-two hours after the occurrence. However, on this record, even if the injury occurred on March 6, 2003 at work, I would be constrained to find that the claimant has failed to establish any of the other four relevant requirements. Specifically, with regard to the first requirement, the

claimant's testimony and the documentary evidence fail to establish that the occurrence of the hernia immediately followed any particular sudden effort, severe strain, or the application of force directly to the claimant's abdominal wall. To the contrary, the claimant's testimony indicates that she began to experience a gradual onset of symptoms at work on March 6, 2003 which became gradually more severe after she left work. Likewise, with regard to the second and third requirements, the claimant's testimony indicates that at no time did she experience severe pain in the hernia region while at work on March 6, 2003, and at no point did severe pain at no point cause the claimant to cease work immediately on March 6, 2003. Finally, I find that the claimant has failed to establish the fourth requirement of giving notice of the occurrence of the hernia to the employer within forty-eight hours thereafter. Although her husband called within forty-eight hours to notify the employer that the claimant was in the hospital for a hernia, at no point during that conversation did her husband indicate or give notice of an alleged hernia injury that occurred at work that day. Accord Daniels v. Affiliated Foods Southwest, 70 Ark. App. 319, 17 S.W.3d 817(2000).

In addition, both the claimant's March 7, 2003 operative report, and her testimony regarding her understanding of the doctor's diagnosis and opinion regarding the origin of her hernia condition, all indicate by the preponderance of the credible evidence, that the symptoms she experienced on March 6, 2003 were simply a recurrence of symptoms associated with a hernia which existed approximately two weeks prior when she had also experienced a similar painful right groin area bulge, but which on that occasion had reduced spontaneously. I note that the claimant was also unable to furnish testimony which would establish any of the five requirements of Section 523(a) to establish that any hernia that occurred two weeks before March 6, 2003 was a compensable hernia within the meaning of the Arkansas Workers' Compensation Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employer-employee-claimant relationship existed on or about March 6, 2003.
3. The respondents would stipulate that the claimant's compensation rate is \$202.00 per week.

4. The claimant has failed to establish by a preponderance of the evidence that she has sustained a compensable hernia injury under the Arkansas Worker's Compensation Law.

ORDER

This claim for a femoral hernia injury is respectfully denied and dismissed.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge