

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F311371

DARIN HARPER, EMPLOYEE	CLAIMANT
HARPER TIRE INC., EMPLOYER	RESPONDENT
TRAVELERS INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED APRIL 14, 2004

Hearing before Administrative Law Judge J. Mark White on March 23, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Mr. Phillip Cuffman, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 23, 2004, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on February 23, 2004, and a Prehearing Order was entered that same day. A copy of the February 23, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier

relationship existed at all relevant times; that the respondents have controverted this claim in its entirety; and that the claimant earned an average weekly wage of \$300, entitling him to a compensation rate of \$200 for total disability and \$154 for permanent partial disability.

The parties agreed that the sole issue to be presented for determination was whether the claimant sustained a compensable hernia injury, for which he is entitled to medical and indemnity benefits.

The claimant contends that he sustained a compensable hernia and that he promptly reported the hernia to the respondent-employer.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 claimant and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that he ceased work immediately as a result of the pain caused by his hernia, or that he reported the hernia to his employer within 72 hours.
4. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable hernia injury.
5. The respondents have controverted this claim in its entirety.

DISCUSSION

On October 22, 2003, the claimant was diagnosed by Dr. Luis Barandiaran with “an incarcerated left inguinal hernia that is quite large.” The claimant testified that he had been lifting tires and loading them on a truck when he felt “a twitch, nothing that hurt.” He described the feeling as, “kind of like popping a bubble, you know. And it just – it really didn’t hurt.” He continued to work until the end of his shift. He testified that he thought this lifting incident occurred on Thursday; the following Monday he noticed a bulge below his beltline while taking a shower at his home. He notified his father, the owner of the respondent-employer, that same day. He went first to a Dr. Patel and then to Dr. Barandiaran, who diagnosed the hernia.

To prove the compensability of a hernia, a claimant must prove by a preponderance of the evidence:

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

ARK. CODE ANN. § 11-9-523(a). The term "occurrence" refers to the happening of the hernia itself, not the work event precipitating the hernia. *Min-Ark Pallet Co. v. Lindsey*, 58 Ark. App. 309, 950 S.W.2d 468 (1997).

It seems reasonably likely that the claimant's hernia was caused by his work. However, to be compensable under the Workers' Compensation Act, his hernia must meet each of the criteria outlined above. The legislature has required the Commission and the courts to strictly construe the provisions of the Workers' Compensation Act. ARK. CODE ANN. § 11-9-704(c)(3). Strict construction is narrow construction, requiring that nothing be taken as intended that is not clearly

expressed and that the plain meaning of the language be employed. *Marshall v. Madison County*, 81 Ark. App. 57, 98 S.W.3d 452 (2003).

If the hernia occurred on that Thursday with the tire-lifting incident, then the claimant has failed to satisfy the third and fourth criteria listed above. For a hernia to be compensable, the claimant must prove that he ceased work immediately due to the pain associated with the hernia; this claimant testified that he did not cease working, and that he in fact completed his work day. The claimant must also prove that he reported the hernia to his employer within three days (72 hours), but the claimant testified that four days passed before he notified his employer.

It would matter not if the hernia were instead found to have occurred on the following Monday, when the claimant first noticed the bulge below his beltline. The claimant must prove that the hernia “immediately followed” a work incident, but the claimant testified that he was at home taking a shower when he noticed the bulge. The work incident which arguably caused the hernia occurred some four days before, and there is no evidence of a work-related effort, strain or force occurring on that Monday. A four-day gap cannot reasonably be interpreted as “immediately followed.”

The claimant has failed to prove by a preponderance of the evidence that he ceased work immediately as a result of the pain of his hernia, or that he reported the

hernia to his employer within 72 hours. Therefore, I must find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable hernia injury.

AWARD

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable hernia injury. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge