

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F311425

CHARLES MILLER, EMPLOYEE

CLAIMANT

EPSTEIN LAND COMPANY, EMPLOYER

RESPONDENT

**AGRI GROUP-COMP SELF-INSURED FUND,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JULY 14, 2004

Hearing before Administrative Law Judge Cynthia Estes Rogers on April 16, 2004, in Monticello, Drew County, Arkansas.

Claimant appeared Pro Se.

Respondents represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

A hearing was held on April 16, 2004, to determine the compensability of the claim filed herein.

The parties stipulated to the existence of the employee-employer-carrier relationship on October 13, 2003, as well as a compensation rate based on an average weekly wage of \$400.00.

Claimant contends that he developed a hernia as a result of a specific lifting incident on October 13, 2003, while in the course and scope of his employment. The claimant contends he is entitled to temporary total disability benefits from October 27, 2003, through January 26, 2004, as well as attendant medical benefits.

Respondents controvert the claim in its entirety, contending the claimant will not be able to meet the specific requirements of the hernia statute to establish a claim of compensability.

STATEMENT OF THE CASE

Claimant contends that on the date of injury, he was installing railroad ties for respondent employer, when his yard boss, Johnny Smith, asked him and others to change the tire on an 18-wheeler. Claimant testified that he felt a sudden, severe strain in the hernial

region while lifting a truck tire. He stated that he stopped working immediately and said to his boss, "Sammy, I'm hurting down here. I need to go to the hospital." He went on to testify that his boss told him to "make an appointment and go," and "before you go, let us know." Claimant said, "Okay."

Claimant asserts that he called the hospital and was told that he had an outstanding bill there and that they could not serve him until he got paid. Claimant testified that he did not seek immediate medical attention because he did not have the money, so he continued working. Claimant further testified that although he did get paid on Friday of that week, he did not seek medical attention until the following Tuesday, October 21, 2003, at which time he saw Dr. Wright.

Dr. Wright's clinic notes from October 21, 2003, state that claimant complained of a bulging abnormality in the right inguinal area and discomfort in that area that he had noticed for a period of two to three weeks, since he had picked up a heavy object at work. He stated that claimant was not sure if it was a railroad tie or some other object.

Although claimant testified that he told his boss on the day of the occurrence that he was injured, Sam Epstein Angel, II, part owner of respondent employer, testified that claimant did not officially report his injury to respondent employer until October 22, 2003, the day after he saw the doctor, at which point claimant was immediately given the paperwork to file a workers' compensation claim.

Mr. Angel testified that he did vaguely remember claimant saying to him at some point, "I don't feel good," but whether it was that particular day [October 13, 2003], he could not remember. He stated that he remembered telling claimant, "If you don't feel good, you need to go see the doctor." Mr. Angel testified that claimant never related to him that he did not feel good because of a pain in his stomach or his lower abdomen or anything in that area or that it was in any way related to work or anything he had been exposed to or done at work

until October 22, 2003, when claimant returned from his October 21, 2003, doctor visit and announced, “I’ve got a hernia right here.”

Tammy Hester, branch manager adjuster for AG Comp Claims, the carrier of the self-insured fund that provides workers’ compensation coverage to respondent employer, testified that she first received notice of claimant’s workers’ compensation claim on October 22, 2003, which was the date on the Form N that was faxed to her that same day. When taking claimant’s recorded statement about his claim, she asked him when he had reported the injury to his employer; she testified that he told her he had notified “Sammy” after he had gotten back from the doctor – the next day, October 22, 2003. When Ms. Hester asked claimant if he had ever had any other injuries, accidents, or claims, he told her of an automobile accident he had been involved in but denied any other personal injuries or workers’ compensation claims. Claimant admitted on cross-examination that he had, in fact, had two previous workers’ compensation claims. He testified, “they slipped my mind.” Claimant further admitted that he failed to disclose those previous claims on the interrogatories propounded to him by respondents’ attorney.

Claimant continued working until October 27, 2003, two weeks after the alleged occurrence.

FINDING OF FACT

1. Claimant has failed to prove by a preponderance of the evidence that he has complied with the requirements of Ark. Code Ann. § 11-9-523(a).

DISCUSSION

In order to prevail on a claim for hernia, the claimant must meet the requirements of Ark. Code Ann. § 11-9-523(a) (Repl. 1996), which provides:

(a) In all cases for hernia, it shall be shown to the satisfaction of the Workers’ Compensation Commission:

(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.

In the instant case, although the claimant testified that he did tell his boss he did not feel well on the alleged date of the occurrence, October 13, 2003, there is no evidence that he told his employer that he had a work-related injury until October 22, 2003, nine days after the occurrence and one day after he saw the doctor. He, in fact, continued working and did not seek medical attention until eight days later. Although claimant contends that he did not seek medical attention because he could not afford to, there is no evidence that the claimant required medical attention within seventy-two (72) hours of the occurrence; further, although he got paid on Friday, October 17, 2003, he continued to wait another four days, until October 21, 2003, to seek medical attention.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge