

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409147

NOAH ABRAMS, EMPLOYEE	CLAIMANT
RITTER DISPOSABLES INC., EMPLOYER	RESPONDENT
ST. PAUL FIRE & MARINE INS. CO., CARRIER	RESPONDENT

OPINION FILED APRIL 18, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on February 25, 2005, at Marion, Crittenden County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE ROBERT H. MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers' compensation benefits.

On November 23, 2004, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issue to be addressed during the course of the hearing, and the parties' contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit. #1.

The testimony of Noah Abrams, the claimant; Kimberly Johnson; Ernestine Lange; Shad Abrams; Stacy Abrams; and Mark Pisahl, couple with medical and other documents comprise the

record in this claim.

DISCUSSION

Noah Abrams, the claimant, and his twin brother Shad, with a date of birth of May 5, 1977, have been employed by respondent as laborers since November 29, 1999. Both brothers were raised by an older brother, Stacy Abrams, from infants.

The twins, claimant and Shad, were born premature and suffered developmental disabilities affecting their ability to fully comprehend some of the questions placed to them during the course of the hearing. Accordingly, while both witness provided articulate responses, claimant more so than his brother, I find their testimony credible within the sphere in which the same was given. While claimant and his twin brother completed the high school, the same was in special education/resource programs.

The work hours of employees of respondent-employer were from 7:00 a.m. to 3:30 p.m., Monday through Friday. Claimant's testimony reflects that on July 23, 2004, he and his brother, Shad Abram, were in the process of moving a large roll material, blue swag, onto a table when he felt pulling and sting in his groin area. Claimant testified that some of his job duties included stacking pallets, wrapping pallets, emptying carts, and loading and unloading trucks.

The testimony in the record reflects that as a infant claimant underwent hernia repair surgery necessitated from birth complications. The testimony of Mr. Stacy Abram, the claimant's older brother, reflects that the claimant and twin brother were born with hernias and was less than a year old at the time of the repair surgery.

The testimony of Mr. Stacy Abrams provides insight into the comprehension levels of both the claimant and his twin brother:

Yes, Sir. I was wanting to add that I was the one that helped raised these, Noah and Shad from birth, and that, from birth, they graduated in resource. They were born with a mental disability. Noah's ear here, and his nose, came from being premature and all, and Shad was, I noticed he was up her witness - - and they don't have the understanding or the comprehension that normal people would have, and he sittin' there, you know, just konwing his - - you know, knowin ' them from birth, that their heritage is not like me and yours. Their comprehension is not like ours. He's sitting there, he's thinking that he have answered things to the best of his knowledge, and didn't - - he's really lost. (T. 98-99).

Mr. Stacy Abrams testified that while the claimant had previously lived with him, at the time of the claimed injury, July 23, 2004, he lived with his brother Shad.

The testimony of the claimant reflects that on July 23, 2004, he suffered the injury, a hernia, which is the subject of this claim. Claimant maintains that he was working with his brother when the injury occurred as the two of them were lifting a large roll of material on to the work table. Claimant's testimony reflects:

And he got one end, it was a roll, it was already rolled up.

He got one end of the roll, I had the other end of the roll.

We lifted it up on - - we were lifting it from a pallet and putting it on the table. And as we was putting it on the table, after we put it on the table, sitting it on the table, I felt severe pain in my groin area in my private area. Right in the pubic region of my area and I reached down. As I got, after I put the material on the table I reached down and bent over to grab myself to help ease the pain, you know, I reached down and, you know, grabbed myself. I was in severe pain. Your reaction is just to reach down to grab myself - -

And I looked and I raised, after I raised back up after that, grabbed myself, I went like whew, I was like, man, I was like, what's going on. I can't believe the pain I felt.

* * *

And I said, man, I'm in a lot of pain. And he said, what's wrong with you? He said, what's wrong with you? I said, I felt a sharp pain in my groin, after I finished putting it on the table. He said, well you might hurt yourself. Go and tell Kim. I went and told Kim that I hurt myself

putting material on the table. (T. 11-12).

Claimant explained that when he said “whew” his brother Shad heard him and inquired further.

Additionally, claimant identified Kim and the assistant manager at the time, Kimberly Johnson.

After reporting his injury to his supervisor, Ms. Kimberly Johnson, claimant’s testimony reflects:

And she called Ernestine and notified Ernestine that I hurt myself putting some material on the table. And Ernestine told me to take it easy and Ernestine was fixing to go on vacation at the time so she told me to take it easy and when she got back she would see what she could do to help me. (T. 13).

The testimony of the claimant reflect that Ms. Ernestine Lange was the plant manager of respondent employer. Claimant asserts that he talked with Ms. Lange on the telephone after reporting the injury to Ms. Johnson. In accordance with the directions that he had received from Ms. Lange claimant testified that he took aspirin for his pain and avoided any heavy lifting.

The testimony of the claimant reflects that he continued working while Ms. Lange was on vacation. Claimant testified that prior to Ms. Lange’s return from vacation he called the clinic in Earle, Ar., to be seen by the doctor and an appointment was scheduled for July 29, 2004.

Claimant testified that he was later contacted by the clinic and the appointment changed to August 2, 2004. After relaying a history of his injury to doctor and following an examination claimant was informed that he had a hernia and needed surgery.

The testimony of the claimant reflects that prior to his August 2, 2004, doctor visit Ms. Lange had returned from her vacation. Regarding the substance of his conversation with Ms. Lange following her return from vacation, claimant testified:

She wanted to know how I hurt myself and exactly when did it happen. And since Kim, the assistant manager was in charge at the time, I didn’t tell her like, I didn’t really know how to explain to her because I

didn't want to get Kim in trouble at the time. Because my being hurt it was in Ms Ernestine's absence. So, I told her I hurt myself moving some rolls.

Moving rolls in the back of the warehouse. I didn't want Kim to get in trouble or fired or anything like that so I pretty much lied to cover up to protect her job. I didn't want to get her in trouble of my being hurt at the time. (T. 15-16).

Claimant again confirmed that he spoke with Ms. Lange on July 23, 2004, the date of his injury, and while reporting the injury, did not tell her the specifics of how he was injured.

Claimant underwent hernia repair surgery on or about August 20, 2004, after being referred to a surgeon by the physician at the Earle Clinic. Claimant was released to return to work by September 27, 2004. Claimant acknowledge that when he went to the doctor for the first time due to the hernia the visit was filed with his health care carrier, Humana. The testimony of the claimant reflects with respect to presentation for medical treatment:

I filled out a form in the doctor's office that I was taking (unintelligible), and they said, do you work or, I mean, what do you do? I said, I've been experiencing pain at the job. I was working on my job. I hadn't been able to perform my job without being in a lot of pain. (T. 28).

Claimant credibly testified that he did not remember if he mentioned to the doctor his lifting activity of July 23, 2004.

Mr. Stacy Abrams, the claimant's older brother, testified that at the time of the claimant's July 23, 2004, injury, claimant lived with his twin brother Shad. Mr. Stacy Abrams became aware of the claimant's injury when claimant came to him and wanted him to examine his site of discomfort/pain:

What he did, he came to me and told me, wanted me to look at the injury and I saw a long mark going down his stomach - -

I think probably, maybe a few days after he had gotten hurt.

Yeah, when he came to me. And I asked him why he hadn't come to me earlier. And I told him, I said, look like you got a hernia. And I took him to the Earle Clinic. No, I didn't take him. I told his to go and he went to the Earle Clinic. And he came back and told me that they had confirmed that he had a hernia injury. So, I told him to go back up there and get a job profile, a light duty slip. I said you don't need to working in that pain. Immediately he went back and got the light duty slip. (T. 34-35).

The testimony of Mr. Shad Abrams is corroborative of that of the claimant, his twin brother, with respect to the claimant's onset of pain immediately following the lifting of the roll of scrim on July 23, 2004. Mr. Shad Abrams' testimony reflects:

Yeah. Let me see. About the time we was rolling up the material my brother felt a sharp pain in his groin and he jumped back. I said, man, you all right? By the time he went to straighten back up, I said, man, you're walking funny, you're hurt. And when I told him that, I said, man, you might need to get checked out. (T. 68-69).

Mr. Shad Abrams testified that he saw the claimant go to report the injury to Ms. Kimberly Johnson as he had recommended.

The testimony of Ms. Kimberly Johnson reflects that in July 2004, she was employed by respondent-employer as the assistant manager. Regarding the claimant's job duties in July 2004, Ms. Johnson's testimony reflects:

Yes. Mainly he was in the back working sorting out our different products. And he would help out with anything that, you know, we needed, like manly help, he would come up and help us out. (T. 37).

Ms. Johnson testified that on July 23, 2004, claimant came to her and reported that he had sustained an injury. Ms. Johnson's testimony reflects regarding the reporting:

Okay. The product we used was Scrim and it weighs up to a

1,000 or 1,500 pounds, you know. But what we do, we roll it up on a roll to a certain amount, and no matter how light you roll it, it's still going to be heavy. So, we have to do this, there would be at least four or five people on the roll picking up. That day we was all picking up. Noah said, whew. And I said, what's wrong? He came to me and he said, sweetheart, I hurt myself. I said, what? I said, what's hurting you? He said my stomach and lower groin. I'm hurting. He came to me and said that. And then in the middle of this conversation Ernestine, our manager, she called on the phone. And she was like, what's going on, you know, I was telling her everything was okay but Noah came to me and told me that he hurt himself. And she was like, well, let me speak to Noah. So, I gave the phone to Noah and Noah got on the phone and talked to Ernestine. The after he finished he gave the phone back to me. Ernestine, the manager to me that, Kim, when I get back on Monday I'll handle all that. (T.37-38).

Ms. Johnson testified that at the time of the lifting on the roll there were a number of other employees assisting, to include Sedrick Lewis, Ruby Brown, Ernestine Lovett, Shad Abrams, claimant and herself.

Ms. Johnson's testimony reflects that after the claimant spoke with Ms. Lange on July 23, 2004, the telephone was returned to her, and that she was directed by Ms. Lange to not allow the claimant to do any further lifting that day. Ms. Johnson's testimony further reflect that during claimant's conversation with Ms. Lange she could hear the claimant's portion as he reported the injury to Ms. Lange. Ms. Johnson asserts that the claimant relayed to Ms. Lange that he felt like he had pulled something. Ms. Johnson testified that the claimant came to work everyday following the injury. Further, Ms. Johnson's testimony reflect that Ms. Lange returned from her vacation in early August 2004.

Ms. Johnson maintains that she did not complete an accident report or any other documentation of the reporting by the claimant because her supervisor, Ms. Lange, told her that she would "take care of everything when she got back from her vacation". (T.39). Ms. Johnson

was employed by respondents for six (6) years, with her employment having been terminated on October 1, 2004.

The testimony of Ms. Ernestine Lange reflects that she has been employed by respondent-employer for eleven (11) years. Ms. Lange is the warehouse manger of respondent, a position that she also held in July 2004. Ms. Lange's testimony reflects that on July 23, 2004, she was on vacation which ended on July 30, 2004. Ms. Lange acknowledged that while on vacation she routinely checked in at the warehouse of respondent to see how things were going.

While Ms. Lange acknowledge talking with Ms. Johnson, who was the assistant warehouse manager, while on vacation, she denies talking with the claimant or that Ms. Johnson told her that claimant had injured himself. Ms. Lange maintains that during a telephone conversation Ms. Johnson relayed that the claimant was sick. Ms. Lange responded when questioned regarding any conversation she may have had with the claimant during the telephone call, "I don't remember talking to Noah". (T. 49). Ms. Lange further testified that she told Ms. Johnson, upon being informed of the claimant's condition [sick], to make sure that he went to the correct doctor so that he could be taken care of.

Ms. Lange asserted that respondent's insurance company had a specific physician to which employees were referred, however she did not know the identity of same. Ms. Lange added that there is a book that contained the identity of the physician.

Ms. Lange testified that when she returned from her vacation, which she believes was on July 30, 2004, she had a conversation with the claimant on the same date. Regarding the substance of her conversation with the claimant, Ms. Lange testified:

I wanted to know, you know, what happened and what the

doctor said. (T.51).

Ms. Lange testified that she called to the desk in the warehouse of respondent on the date of her return from her vacation. She was informed by the claimant, in response to her inquiry, that the doctor at the Earle Clinic had diagnosed his complaint as a hernia. Ms. Lange testimony reflects with respect to her response to the claimant's statement:

I asked him, I said, how did you get your hernia? What happened to make you, you know, have a hernia? And he told me that he was doing some lifting in the back of the warehouse where he worked. And I told him, I said, you didn't tell me anything about it when it happened. I said, when did it happen? He said, back in the fall. I said, well, that was almost a year ago. So, you didn't report it to me about, you know, that you had got hurt back there because we would have took care of that back then with workers' compensation.

Well, then I had to check with workers' compensation. I wrote up a report and everything of what he had told me, that particular day. I wrote up my paperwork and I faxed it in to, you know, I faxed it in. (T. 51-52).

Ms. Lange maintains that she completed the accident report and paperwork on the date that she returned from her vacation on July 30, 2004, and faxed the documents to the respondent's workers' compensation insurance carrier. While Ms. Lange asserts that she retained a copy of the documents, she did not produced them at the hearing. On later questioning, after learning that July 30, 2004, was also on a Friday, Ms. Lange testified:

I remember writing that up on July 30, 2004, uh-huh. I returned to work the following week.(T. 53).

Ms. Lange testified that she returned to work from vacation on a Monday, July 26, 2004.

Regarding her conversation with Ms. Johnson, after having talked with the claimant once she returned from her vacation, Ms. Lange testified:

Yes, I did. I said, did he say anything about being hurt in the

back to her. And she told me no. And I told her he was complaining to me it was in the fall of that past year of 2003. (T. 54).

Ms. Lange, on questioning by respondents' attorney, testified that it was her understanding on Monday, July 26, 2004, that the claimant was sick and went to the doctor.

Ms. Lange testimony reflects that the entirety of the time claimant has been employed by respondents she has had an opportunity to observe him at work, and that prior to July 23, 2004, she had not witnessed any physical restrictions or limitations on the part of the claimant with respect to performing his job duties. Ms. Lange further testified that once she returned from vacation to work on July 26, 2004, from her observation claimant did not appear to be in any distress or limited in physical capacity until July 30, 2004.

Ms. Lange asserts that when she completed her paperwork and forwarded to the insurance carrier she included the information that she had been furnished by the claimant on July 30, 2004. Ms. Lange maintains that she included in her paperwork to the carrier that claimant relayed that he had sustained his injury while lifting at work in the Fall of 2003.

The testimony of Mr. Mark Thomas Pisahl reflects that he is the president of respondent-employer. Mr. Pisahl testified that he was at work on July 23, 2004. Regarding when he first became aware of the claimant's claim of an injury while working on July 23, 2004, Mr. Pisahl's testimony reflects:

It will be the best that I remember, because I don't have a specific day, but I do recall it being well into the week following the date of the actual, what he's claiming the incident date was. I do know about it, I want to say a little extra on that, too. I'm not out there and I wasn't present, so I'm basing it on what my supervisor tells me. (T. 84).

Claimant's supervisors during the pertinent time period were Ms. Kimberly Johnson and Ms.

Ernestine Lange. Mr. Pisahl denies that either of the supervisors made any sort of report to him about the claimant hurting himself on July 23, 2004.

Regarding the point in time on July 30, 2004, when Ms. Lange completed the accident report based on her information of the claimant's claim, Mr. Pisahl testified:

She had pretty much already filled out the incident report when she came to me and, of course, I was shocked, and immediately went to Noah with Ernestine at that time and pulled him into the break and I wanted to get to the bottom of it. I wanted to know how this had happened and why it happened and I just wanted to get the bottom of it. At that point, I determined that he was injured to the extent that he needed, obviously, to seek medical attention and I even advised him to do so. I said if you need to go to the doctor, go to the doctor. There was some concern between Ernestine and I based on the way the, based on the vagueness of how the injury occurred or, if it did, where it occurred. If it occurred in our workplace, or if it occurred outside the workplace. At that point, I didn't care. I think a lot of Noah. I've made no secret about it. All I told Noah was that I wanted him to seek medical attention, that he was in our group health insurance policy, and that, indeed, one or the other would compensate him totally for his injury, so he would be covered for that. (T. 85).

Mr. Pisahl testified that while he did not recall the date of his conversation with the claimant in the break room, once the form was filled out and it was brought to his attention, the discussion occurred immediately thereafter. The testimony of Mr. Pisahl reflects that he did not inquire of the claimant specifics of the accident, to include any witnesses, but rather that he was relying on the information relayed by Ms. Lange, and that his concern was in getting medical treatment for the claimant.

The testimony of Mr. Pisahl reflects that the claimant was paid his regular wages for the weeks beginning August 13, 2004, through September 13, 2004. Mr. Pisahl's testimony reflects:

In full, and I'd like to further that, too. There would have been an additional check on that list. I do know that Ernestine was going above and beyond the call of duty. She was actually working with Noah in trying to

ensure that he was working with doctors in our medical group plan, our co-pay, because if he does not go to the proper doctor, our health insurance will not pay, so they have to be on our co-pay plan. Ernestine was basically working with Tasha Poteet (phonetic), who is our insurance, our group health insurance sales person, one-on-one, basically on the telephone over the course of several days, to try to ensure that Noah would go to the proper doctor. There were some documents because, at that point, Noah had gone outside of that plan and sought a doctor or specialist of some kind that was not in that plan, and she was actually, our insurance agent was trying to get that doctor in our plan, in our group, but she needed Noah to sign some documents stating - - I really don't remember what the documents stated, but I know that we were trying to get that doctor pulled into the group. At that point, we contacted Noah at home. Noah said he wasn't going to sign anything because his brother had advised him that that was not, he just wasn't going to sign anything, and at that point I said if he's not going to cooperate with us when we're going overboard at trying to help him, then I am not going to pay this disability anymore, and we ceased. (T. 87-88).

Mr. Pisahl's testimony reflects, with respect to respondent's policy on reporting work related injuries:

I want to make myself real clear on this, because I think there's a lot of room for question. We have a very strict protocol with injuries in the workplace, because the very nature of what we do, we're a textile cutter mill, if you will. There is a tremendous amount of room for accidents. Protocol is such that if there is an injury anything greater than a band-aid, that there has to be an incident report filed immediately. Kim, working for us for as many years as she did, was well aware of this protocol. We basically go overboard at trying to ensure that everyone that is in a supervisory position knows what the procedure is, only because it could be the matter, in some instances, of life or death and/or it could be an injury that's internal, because we're dealing with heavy rolls of material. There are many things that can enter into this. This is at the advise of our umbrella insurance carrier. We have to comply. The bottom line is, is that all I can tell you is that that incident report was handed to me and the date that's on the incident report was when that was given to Ms. Ernestine Lange. There is no hesitation. There is no waiting. If there is an incident in a warehouse, the incident report is to be filed immediately. This is protocol. (T. 88-89).

Mr. Pisahl testified that Ms. Kimberly Johnson was discharged for failure to follow protocol in completing an incident report. Mr. Pisahl asserts that Ms. Johnson had been reprimanded in the

past for her failure to follow protocol. Mr. Pisahl's testimony reflects that he was not aware of any witnesses to the claimant's lifting experience nor did he discuss the claimant's injury with Ms. Johnson. Mr. Pisahl testified:

I'm sorry to say this, but the answer to the question is no, and it's in lieu of the fact that there were so many things that Mrs. Johnson was not doing, as far as her job responsibilities were concerned, that this was one of the contributing factors as to why she's no longer with us. (T. 97).

Mr. Pisahl maintains that he did not discuss the claimant's injury with Ms. Johnson.

In terms of the job tasks performed by employees of respondent-employer, the testimony of Mr. Pisahl reflects:

We have forklifts that lift the rolls and move them around the warehouse. Some of these rolls can exceed five-thousand pounds; that's two-and-a-half tons. The bottom line is that no any number of human beings could never lift that kind of weight. It's impossible. We have a ferris wheel, and this is a machine simply that takes a solid roll and unwinds it onto an exterior layer and it builds up a thickness, it can be even this thick. Typically we don't exceed a thickness more than two-and-a-half inches because the saws don't have enough horsepower to saw through it. At two-and-a-half inches of thickness on this ferris wheel machine, it takes at least five to seven people to unload the machine and slide the material up onto the cutting table so that we can cut the material, and you have to understand, Judge, the process in which we do this. Maybe that will kind of aid, because I want to kind of clear the air a little bit on some other things that Shad and Noah have described. It does take a few people, as a matter of fact, we have our hourly's more or less converge on the machine to all help each other load the material off of the ferris wheel onto the table to be cut. The rolling concept that Shad has described takes place when they get the edge of the material up on the table and they grab that end and they start pulling and then other people lift, and then they slide that whole bolt of material up onto the table. The table is nine to twelve feet long. Some of these slab lengths, we call them slabs, can exceed fifteen, twenty feet. So, rather than have it go all the way across the table and then go down off the edge of the table and make contact with the floor, they choose to take that end and fold it back up onto the table, and then they pull it again, and then they fold it again. And, in this process, the hinging roll that they start building up can become precariously heavy. It's a point which two human beings cannot lift it any

more, they don't have the physical strength to do so. I would also like to say for the record that I have, I even have documented in several employees' files, not just Noah, but several of the laborers that help or aid in this process, that I cannot begin to explain how many times we explained to them do not over stress yourself there's no point, to call someone to help, whether it's lifting a box, lifting a roll, anything of that nature to seek help before you try or attempt to lift something that's heavier than you can bear. This process I wanted to make clear because it sounded as if Noah and Shad were working singularly or alone and, indeed, they were, to a certain extent. There was a nine or a twelve-foot table in between them and the other three or four people that were aiding at the other end, and I think there is some cloudy area there, and I want to make sure that at least we all understand what the process is. Indeed, it's possible that the injuries could have occurred. The terrible truth is that I can't tell you whether they occurred in the job place or not, I wasn't there. All I tried to do was try to do the best I could by Noah. That's all I tried to do. (T. 89-91).

On the one hand, Mr. Pisahl testified that he does not have a specific recollection of claimant's account of the mechanics of his injury, but rather confirmed with the claimant if the injury occurred in the manner as claimant had relayed to Ms. Lange. On the other hand, the testimony of Mr. Pisahl reflects that he stressed to the claimant the importance of the accuracy reporting. Mr. Pisahl's reflects:

He didn't say that it occurred in the fall to me. He said it, according to what Ms. Lange described to me in our conversation, she reiterated that to me. I did not ask him that. All I said was, you know, have you had this for as long as Ernestine said, and said yes. And, I even appealed to him, I said, Noah, this is going to be a difficult situation. We need to be very specific. Did this happen this way and then I explained to him, I said, it doesn't matter, because your bills are going to be paid, either through group health or through workmen's comp. My concern is basically that you get care. (T. 95-96).

After a thorough consideration of all to the evidence in this record, to include the testimony of the witnesses, review of documentary evidence, and application of the appropriated statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On July 23, 2004, the relationship of employee-employer-carrier existed among the parties.
3. On July 23, 2004, the claimant earned wages sufficient to entitle his to weekly compensation benefits of \$315.00, for temporary total disability.
4. On July 23, 2004, the claimant sustained an injury arising out of and in the course of his employment.
5. The claimant was temporarily totally disabled for the period August 13, 2004 through September 27, 2004.
6. The claimant's healing period ended on September 27, 2004.
7. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of July 23, 2004.
8. The respondents have controverted the claimant's entitlement to workers' compensation benefits as a result of the July 23, 2004.

CONCLUSIONS

Claimant asserts that he suffered a hernia within the course and scope of his employment with respondents which required medical treatment and rendered him incapacitated from engaging in gainful employment from August 13, 2004, through September 27, 2004. Respondents have controverted this claim in its entirety, and assert that claimant cannot sustain his burden of proof relative to compensability.

The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of an injury having been

sustained subsequent to the effective date of the afore provision. In the instant claim, claimant maintains that he suffered a hernia on July 23, 2004, while discharging employment duties.

Ark. Code Ann. § 11-9-523 (a) provides that in all cases for claims of 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;
- (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 claim, there is not a dispute of the claimant's employment activities on July 23, 2004. Claimant has been employed by respondent as a laborer since November 29, 1999. There is no credible evidence in the record to reflect that claimant complained of pain in the hernial region at any time during his employment prior to July 23, 2004. Further, there is no evidence in the record to reflect that claimant experienced physical limitations or restrictions in the discharge of his employment duties prior to July 23, 2004.

The mechanics of the claimant's injury of July 23, 2004, is reflected in the testimony of the claimant; his immediate supervisor on the day in question, Ms. Kimberly Johnson; and the president/owner of respondent-employer, Mr. Mark Pisahl. Mr. Pisahl was not present at the time of the July 23, 2004, incident. Ms. Kimberly Johnson, the assistant manager of the

warehouse, was present and participating in the lifting incident at the time of the claimant's July 23, 2004, injury.

The credible testimony of the claimant and Ms. Johnson, the claimant's immediate supervisor, reflects that as a result of the severe strain while participating in the lifting of the roll of material, claimant responded "whew", and stopped participating in the lifting. Ms. Johnson noted that the claimant's action were uncharacteristic and she observed evidence of discomfort or pain in the claimant. The credible evidence further reflects that the injury/pain in the claimant's hernial region was immediately reported to his supervisor, Ms. Johnson.

Further, the credible evidence in the record reflects that the claimant's injury was reported to the warehouse manager, Ms. Ernestine Lange, shortly after its occurrence by both the claimant and Ms. Johnson during a telephone conversation. Ms. Lange was on vacation at the time she called the warehouse on July 23, 2004, and the injury was reported. A Workers Compensation - First Report of Injury or Illness form, Form 1A-1, was prepared on August 27, 2004, by respondent-carrier. The document reflects July 30, 2004, as the date of the claimant's injury and as the date that the employer was notified. (RX.#3). While Ms. Lange asserts that claimant relayed that he had suffered in injury in the Fall of 2003, the First Report of Injury document is devoid of same, although the testimony reflects that information contained on the document was the product of the accident report completed by Ms. Lange and provided to the claim adjuster.

The evidence preponderates that claimant, after inquiring of his older brother, Mr. Stacy Abrams, about his complaint of pain in the hernia region, on July 23, 2004, contacted the physicians at the Earle Clinic and scheduled an appointment for medical treatment due to the injury. The appointment was initially scheduled for July 29, 2004, however was later

rescheduled by the Clinic for August 2, 2004. Accordingly, the evidence preponderates that physical distress suffered by the claimant following the occurrence of the hernia was such as to require the attendance of a licensed physician with seventy-two (72) hours after the occurrence. Claimant's injury was diagnosed with a left inguinal hernia and was referred to a surgeon for surgical repair. (RX. #2).

The claimant has sustained his burden of proof by a preponderance of the evidence that he suffered a left inguinal hernia within the course and scope of his employment with respondents on July 23, 2004. The evidence further reflects that the claimant has satisfied each of the requirements of Ark. Code Ann. §11-9-523 (a) establishing the compensability of the hernia. Respondents have controverted this claim in its entirety.

Ark. Code Ann. §11-9-523 (b)(1) provides:

In every case of hernia, it shall be the duty of the employer forthwith to provide the necessary and proper medical, surgical, and hospital care and attention to effectuate a cure by radical operation of the hernia, to pay all reasonable expenses in connection therewith, and, in addition, to pay compensation not exceeding a period of twenty-six (26) weeks.

The credible evidence reflects that when the claimant reported the July 23, 2004, injury to supervisory personnel of respondents on the date of its occurrence, he was directed to refrain from doing any further lifting. Claimant was not provide access to medical treatment by respondents. As a consequence of the afore, claimant sought medical treatment on his own at the Earle Clinic and referral therefrom. The medical treatment provided to the claimant, to include surgery, was reasonably necessary in connection to his compensable injury. Respondents are liable for the cost of same.

There is evidence in the record to reflect that claimant performed restricted/modified

duties pending his hernia repair, during which time he earned his regular wages. Further, the evidence reflects that claimant continued to receive his regular wages through September 13, 2004, while recovering from his surgery. Claimant returned to the employment of respondent on September 27, 2004. Claimant is entitled to the payment of temporary total disability benefits through the end of his healing period or until he returns to gainful employment, not to exceed twenty-six (26) weeks. Respondents have controverted this claim in its entirety.

AWARD

Respondents are herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$315.00 for the period commencing August 13, 2004, and continuing through September 27, 2004, as a result of his compensable hernia of July 23, 2004. Said sums accrued shall be paid in lump without discount. Respondents may claim credit for sums heretofore paid toward the afore mentioned obligation.

Respondents are further ordered and directed to pay all reasonably related medical, hospital, nursing and other apparatus expenses, to include medical related mileage, growing out of the July 23, 2004, compensable injury.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge