

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F402080

KATHLEEN COFFMAN, EMPLOYEE **CLAIMANT**

TROUTMAN OIL COMPANY, EMPLOYER **RESPONDENT**

**HARTFORD CASUALTY INSURANCE COMPANY,
SPECIALTY RISK SERVICES (TPA),
INSURANCE CARRIER** **RESPONDENT**

OPINION FILED FEBRUARY 15, 2005

Hearing before Administrative Law Judge Cynthia Estes Rogers on November 17, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Scott A. Scholl, Attorney at Law, Jacksonville, Arkansas.

Respondents represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

A hearing was held on November 17, 2004, to determine the compensability of the claim filed herein.

The parties stipulated to the existence of the employee-employer relationship on February 19, 2004. It was further stipulated that the claimant's earnings were sufficient to entitle her to weekly indemnity benefits in the amount of \$241.00 for temporary total disability and \$181.00 for permanent partial disability benefits, based on an average weekly wage of \$361.00.

Claimant contends that she suffered a compensable hernia under Ark. Code Ann. § 11-9-523 and complied with the requirements of that statute.

Respondents controvert the claim in its entirety, contending that claimant did not sustain a compensable hernia.

STATEMENT OF THE CASE

Claimant is a fifty-five-year-old woman with limited formal education, who has been working since the age of fourteen. She began working for respondent-employer in 1996 and, at the time of alleged injury, was working as a store manager. Claimant testified that her supervisor is Ms. Jody Troutman.

Claimant testified at the hearing that on Thursday, February 19, 2004, the store had received a delivery of canned soft drinks. She testified that Mr. Toby Troutman would normally drop the drinks in the middle of the floor, and then it was claimant's responsibility to carry them to the back of the cooler and stack them. She testified that on this date, she was working alone in the store, which was normal. She had picked up nineteen cases of canned "cokes" and had thrown them up on the shelves in the cooler. She testified that as she was working on the last one, while throwing it up onto the shelf, she felt a knot in her stomach and thought she had to go to the bathroom. She testified that the pain was immediate and severe and that it caused her to drop the last case of "cokes." She testified:

I mean, it just felt like somebody was going like this, like you had diarrhea real bad.

So I left the cooler and went to the bathroom and I couldn't use the bathroom, so I came back up front. And I was hurting, so I just sat down behind the register. I had about thirty minutes left before my shift was over, so I stayed there and ran the register until the girl came in and then I went out and went home.

Claimant testified that she thought it would have been irresponsible to have left the store immediately upon feeling the pain, as there was only thirty minutes left on her shift. Claimant admitted that she did not report the injury to Ms. Troutman, her supervisor, until late Monday, February 23rd; however, claimant testified that she *did* call Ms. Troutman Friday morning, February 20th, the day after the injury, to tell her that she was “bent over” and could not stand up. Claimant had gone to work that morning at 3:30 a.m. and had attempted to do her job; however, she testified that she could not stand up straight due to the pain; therefore, she called Ms. Troutman to send a replacement employee. Claimant testified that she simply did not know at that time what the injury was or that it was work-related; she just thought she was sick. She testified that she went home and went to bed.

Claimant testified, and medical records reflect, that that night, actually around 2:00 a.m. Saturday morning, February 21st, claimant went to the hospital emergency room and was diagnosed with the flu. She did testify that Dr. Joe Daugherty commented that she had a hernia, but she told him that “bump” had been there before and had gone away. She was sent home with anti-diarrheal medication and was told to return if she was not feeling better. She testified that she was very ill all weekend

and that late Sunday night/early Monday morning, she returned to the hospital and was in surgery within forty-five minutes. According to the medical records, the doctors had found that claimant had a “small bowel obstruction” and, when she was taken for emergency exploration, she was found to have “an incarcerated umbilical hernia with knuckle of small intestine strangulated.”

Claimant had to have a bowel resection, with about a three-inch segment of small intestine being removed. Claimant testified that when she came out of the anesthetic following her surgery, Ms. Troutman was called and told what was wrong with claimant. Although claimant denies ever having had a previous hernia, Dr. Hayes’ notes state that claimant has had a “longstanding history apparently of reducible umbilical hernia.”

Claimant testified that later that week, when she thought she was going to be released from the hospital to go home, there was some complication, requiring a second surgery. She further testified that she was again later hospitalized with gangrene. Claimant testified that she was off work and unpaid from the date of injury, February 19, 2004, through April 29, 2004, when she returned to work for respondent-employer on light duty. Claimant testified that the doctor did not really want to release her at that time, but she “conned” him into it because she needed to return to work, and Ms. Troutman needed her help. She testified that her health

insurance has covered only part of her medical bills. Claimant further testified that she has had to drive approximately 125 miles, total, for care for her hernia.

Respondents introduced claimant's Answers to Interrogatories propounded to her in this case and answered on June 21, 2004. In response to Interrogatory No. 14, which asks "Please describe the accident causing your hernia injury in detail." Claimant's response was somewhat different from her testimony at the hearing. Her response to Interrogatory No. 14 was as follows:

On February 19, 2004, at work I was told that we would get a coke shipment in that night. We had cases of canned coke on the floor that was in the way of the bottled coke coming in. I went into the cooler and lifted 19 cases of coke up and placed them on shelves over my head and waste high and stacked them. *After work I went home and cooked supper and played dominos with my father.* About 1 a.m. I woke with stomach pains and went to the bathroom. *I got up at 3:30 a.m. and went to work even though I was hurting in my lower stomach.* During work I got to hurting real bad and was throwing up and feeling as if I had to go to the bathroom real bad but could not go enough to relieve the pressure. I finally called my boss and told her to get someone in the store. I then had my relief call my husband to have him meet me as by now I could barely stand up. *I went home and went to bed and spent the day and most of the night sick and in pain.* I went to the ER that night and Dr. Dougherty (sic) said I had the flu and *commented I had a nasty looking hernia.* He gave me medicine for diarrhea and vomiting. I went home and stayed in bed as I did not want my 87 year old father getting this flu. *By Sunday night I was in such pain I went back to the ER and Dr. Hayes was on duty. He had me in surgery within an hour with a ruptured hernia and strangled intestine. Four days later he had to go back in.*

[Emphasis added.] Claimant stated in her interrogatory responses that she reported the “whole thing” to Ms. Troutman on Monday morning, since she had at first thought she had the flu.

Respondents contend that the hernia statute is clear in its requirements and that claimant has not met those. Respondents assert that there is some speculation that lifting the cases of cokes may have caused the hernia, but that as far as the statute is required, there was no “sudden effort” that resulted in a hernia and which caused claimant to cease working *immediately*. Respondents point out that claimant continued the rest of her shift and, in fact, returned to work the next morning. Respondents maintain that, according to claimant’s answers to interrogatories, and according to the history in the medical reports, claimant had no pain or abdominal pain, or any kind of pain, until Friday, February 20th, the day after the alleged incident occurred.

The medical records reflect no mention by claimant to the emergency room doctor at her first visit on February 21st that she had had a problem lifting something, such as the cases of cokes. Respondents assert that if she had, the physicians would have found the hernia earlier than they did. Respondents further contend that claimant did not report a work-related incident to her employer within forty-eight hours, as required by the statute. Claimant admitted that she did not report it until she was properly diagnosed, which was not until Monday, February 23rd. Respondents

simply assert that claimant has failed to meet any of the requirements of a compensable hernia.

FINDING OF FACT

Claimant has failed to prove by a preponderance of the evidence that she 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 she did tell Ms. Troutman that she did not feel well the morning after the alleged date of the

occurrence, there is no evidence that she told her employer that she had a *work-related injury* until February 23, 2004, four days after the occurrence and two days after she first saw the doctor. She, in fact, continued working the day of alleged injury and returned to work the next morning. She did call and request that her employer send a replacement on Friday, February 20th; however, she still did not seek medical attention until early Saturday, February 21st.

Although claimant contends that she did not seek immediate medical attention because she thought she was simply “ill” rather than “injured,” claimant did, according to her testimony and medical records, require medical attention within seventy-two (72) hours of the occurrence; however, she did not report to the emergency room physician that she had hurt herself lifting something. She simply presented with abdominal pain, vomiting and diarrhea. Claimant admitted that Dr. Daugherty noted she had a “nasty looking hernia”; however, she told him that that “bump” had been there before and had gone away. She was told she had the flu and was sent home with anti-diarrheal medication.

Claimant appeared a credible witness at the hearing; however, her live testimony was inconsistent with that of her responses to interrogatories with regard to her need to cease work and require immediate medical attention. In fact, she responded to the interrogatories that she went home the day she allegedly injured herself moving the cases of cokes, made dinner, and played dominos before even

feeling pain. In this case, claimant has simply failed to meet the requirements of the statute to support a compensable hernia.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge