

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F412724

CARL HOLT	CLAIMANT
TERRACON CONSULTANTS, INC.	RESPONDENT
LIBERTY MUTUAL FIRE INS. CO. INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 21, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by CONRAD ODOM, Attorney, Fayetteville, Arkansas.

Respondents represented by JAMES ARNOLD , II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on May 3, 2005, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on January 27, 2005. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

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

2. In November 2004 the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$267.00 for temporary total disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's hernia.
2. Related medical.
3. Temporary total disability following the claimant's surgery.
4. Attorney's fees.

In regard to the foregoing issues the claimant contends that the employee/employer relationship existed on or about November 4, 2004. That on that date he was lifting a five-gallon bucket of gravel and felt something pull below his navel. He reported this injury but it was not necessary for medical treatment. That employee/employer relationship existed on or about November 15, 2004. That on that date he was lifting an item while in the scope and course of his employment and he felt significant pain. That this pain caused him to stop working. That his pain was reported to the employer within 24 hours. That this pain resulted in the need for immediate medical attention. That the claim has been controverted in its entirety.

In regard to the foregoing issues the respondents contend that the claimant does not meet the compensability requirements of the provisions of the Arkansas Workers' Compensation Act dealing with hernia injuries.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical information marked Claimant's Exhibit No. 1. The respondents submitted medical information marked Respondents' Exhibit No. 1 and non medical marked

Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he had been working for the respondent approximately two years. The claimant testified that his title is that of a Lab Tech II with his duties including overseeing the laboratory and logging the product that comes in as well as test the product. The claimant explained that the respondent's business is an engineering consulting firm that tests the earth for construction. The claimant testified that a variety of samples come in some being concrete, aggregated soils and all different types of items that are used in construction which they test. The claimant testified that these soil samples come in five gallon buckets and these are probably the heaviest samples that they deal with. The claimant testified that these samples would weigh anywhere from twenty to fifty pounds although some of the aggregates may weigh a little more. The claimant testified that in November 2004 he was carrying a five-gallon bucket to dump the waist out of it and he pulled a muscle in his abdomen. The claimant explained that this was on his right side about mid way. The claimant testified that it did not cause him to stop work but he did fill out a report involving the incident. The claimant agreed that on this report he listed Robert Brewer as a witness, noting that Mr. Brewer works in the lab with him. The claimant testified that he had a little bit of difficulty with his side

following this incident but it was not anything that stopped him from working or that he needed to seek medical treatment for.

The claimant testified that on November 15, 2004, at about 11:45 a.m., he was lifting an oil pan of samples and got a "stand up noticeable hurt." The claimant testified that this pain caused him to stop work immediately and that he went immediately to report the event. The claimant testified that on his way to the office he thinks he recalls reporting this incident to Robert Brewer and to Twila. The claimant testified that he went to the office and reported this event to Debbie who filled out paperwork. The claimant testified that from there he went to Cooper Clinic and saw Dr. Karl Haws. The claimant explained that the pain that he felt earlier in the month was in a different area than the pain he experienced on November 15. The claimant described this pain as being a cramp piercing pain in his navel area. The claimant indicated that the intensity level of the November 15 pain was much much more severe than the November 4 pain.

The claimant testified that Debbie is the office manager and she is the person that they were to report injuries to. The claimant testified that it was Debbie that sent him to the doctor.

The claimant testified that he continues to have problems and that he is working with weight restrictions to lift no more than twenty-five pounds. The claimant testified that it was his understanding that he has an umbilical hernia for which surgery has been recommended.

On cross examination, the claimant agreed that on November 4, 2004, he was carrying one or two buckets of gravel and felt a pain or pulled a muscle which he reported to the respondent and filled out paperwork. The claimant further agreed that he continued working and did not seek medical attention at this time. The claimant testified that on November 15 he had been lifting oil pans of soil samples all morning and was lifting a soil sample when he felt very sharp pain. The claimant read from the form which he filled out at Dr. Haws office that he was lifting a bucket of gravel and felt a pull in his navel. The claimant testified that he had no explanation why he put down that his injury happened on November 9 rather than on the day he saw Dr. Haws which was November 15. The claimant testified that he also does not have an explanation as to why he put down as a description of his accident of lifting buckets of gravel and felt pull in navel when he now is testifying that he was lifting an oil pan with soil samples when he felt sharp pain.

The claimant testified that he has not missed any work as a result of his hernia and that the respondent has helped him work around his restrictions.

Charles David Cooley testified that he was the construction materials manager for the respondent and works with the claimant. This witness testified that the claimant is a good employee and that he is honest and trustworthy. Mr. Cooley testified that he does not have any reason to doubt the claimant's word. This witness testified that he was aware of the claimant's November 4

incident. Mr. Cooley testified that it was the claimant's choice not to go to the doctor on November 4. This witness testified that he was not in the office on November 15 and that he does not recall that day or having any conversation with Debbie about the claimant when he came into the office.

On cross examination, Mr. Cooley testified that he had no reason to question whether the claimant was giving an accurate description of the incident on November 4, 2004. This witness testified that after the form was filled out he did sign the report.

The medical records set forth that the claimant was seen at Cooper Clinic by Dr. Karl Haws for complaints of an accident which occurred approximately November 9, 2004. The history sets forth that the claimant reports that since this date in question he has had pain in his navel area which occurred initially after lifting a bucket of gravel. After examination, the claimant was diagnosed with an umbilical hernia and a surgical evaluation was scheduled. The claimant was returned to work with a restriction of no lifting greater than twenty to twenty-five pounds. The claimant was seen at the Northwest Arkansas Surgical Clinic on November 18 at which time he filled out a history of his illness where it is indicated that he was lifting a bucket of gravel and felt something in his navel that was not normal. Dr. James Bledsoe writes on November 18, 2004, that at the claimant's work which involves standing and lifting he noted some discomfort in his umbilical area and some

swelling. After examination, the doctor diagnosed the claimant with having an umbilical hernia and recommended a hernia repair.

The non medical evidence sets forth that on November 4, 2004, the claimant filled out an accident report for the respondent setting forth that at 11:45 he was lifting five gallon buckets of gravel and felt something pull below his navel. On November 15, 2004, the claimant filled out a form for the Cooper Family Medical Clinic that the date of accident was the 9th with a question mark and then filed at office. When asked as to a description of the accident the claimant has written in lifted bucket of gravel felt pain in navel.

Compensability of work related hernias are governed by Ark. Code Ann. §11-9-523 which provides in pertinent part:

(a) In all cases of claims 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.

After a review of this case, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable hernia on November 15, 2004, while working for the respondent. The claimant has testified that early in November he was lifting five gallon buckets of gravel when he felt a pull in his abdomen area. The claimant and the records reflect that he reported this injury but continued working and did not request nor did he feel that he was in need of medical treatment. The claimant testified that on November 15, 2004, he had been working all morning and when lifting a pan of soil he felt an intense sharp pain which, in his words, stopped him in his tracks and he immediately quit working. The claimant testified that he immediately reported this incident and was sent to the doctor. The medical records set forth that the claimant has been diagnosed with an umbilical hernia and surgery has been recommended. There has been much discussion and testimony as to the claimant filling out forms where he indicates his injury happened earlier when lifting five gallon buckets of gravel. It is quite possible that the claimant did sustain a strain or slight pull in his side earlier in the month but it was when lifting the soil sample on November 15 when his hernia, in my opinion, occurred. The claimant has met all five criteria for establishing a compensable hernia and benefits should be paid in accordance with Ark. Code Ann. §11-9-523(b)(1).

FINDINGS & CONCLUSIONS

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

2. In November 2004 the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$267.00 for temporary total disability.

4. The claimant has proven by a preponderance of the evidence that he sustained a compensable hernia on November 15, 2004, while working for the respondent. See discussion above.

5. The respondents should pay all reasonable and necessary medical treatment for this claimant's compensable hernia.

6. The respondents should pay benefits to this claimant in accordance with Ark. Code Ann. §11-9-523(b)(1) to include any temporary total disability following the claimant's hernia surgery.

7. The respondents have controverted this claim in its entirety.

8. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a work related hernia while working for the respondent on November 15, 2004.

The respondents should pay all reasonable and necessary medical treatment for this claimant's compensable hernia.

The respondents should pay temporary total disability to this claimant in accordance with Ark. Code Ann. §11-9-523(b)(1) for the period of time that he is off work following his hernia surgery.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE