

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409103

HUMBERTO MENDOZA	CLAIMANT
MEDLOCK FORREST PRODUCTS, INC.	RESPONDENT
CROCKETT ADJUSTMENT INSURANCE CARRIER	RESPONDENT

OPINION FILED MAY 12, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL HAMBY, Attorney, Greenwood, Arkansas.

Respondents represented by BETTY DEMORY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on March 24, 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 November 16, 2004. 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. From January 2004 through August 9, 2004, the relationship of employee-employer-carrier existed between the parties.

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. Attorney's fees.

In regard to the foregoing issues the claimant contends that he is entitled to continuing medical treatment in regards to the above claim as well as surgery as recommended by the claimant's treating physician, as well as statutory attorney's fee.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a compensable injury arising out of and in the course and scope of his employment in January 2004 or on August 9, 2004. Specifically, respondents assert that the claimant's claim of a hernia does not meet the provisions of a compensable claim pursuant to Ark. Code Ann. §11-9-523. Respondents also reserve the right to assert additional contentions as may become known through discovery.

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 records marked Claimant's Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he had been working for the respondent for approximately three years as a forklift driver, cutting boards and stacking lumber. The claimant explained that the respondent's business is a lumber yard where they build pallets. The claimant testified that Mr. Medlock, the owner of the business, and Ricky are his supervisors and that Ms. Medlock is involved in the business working primarily in the office.

The claimant testified that in January 2004 he was working for the respondent on a machine cutting boards. The claimant explained that these boards are about eight feet long and weigh about 100 pounds. The claimant testified that he gets the boards off the forklift and puts them on the machine and then feeds them into the machine to trim them down. The claimant testified that he began to feel pain in his left groin area but he did not report it because he was fearful of losing his job. The claimant testified that he continued to work and did not seek medical treatment. The claimant testified that the pain in his groin area did not go away but did stay about the same and that he did not notice any bulge in the groin area.

The claimant testified that on August 9, 2004, he was working running another machine which cuts the ends off the boards and the pieces that are cut off fall into trash cans. The claimant testified that when the trash cans get full they have to be emptied. The claimant testified that these trash cans come up to about his waist and that filled with scrap and saw dust he would estimate that they would weigh eighty to ninety pounds perhaps up to one hundred. The claimant testified that he pulled the trash can over to the trash bin, he squatted down to lift the trash can up to empty it into the trash bin and as he was lifting the can he felt a sharp pain. The claimant testified that to dump the trash can into the trash bin he would have to lift the trash can approximately chest high. The claimant testified that he put the trash can down really fast and he told Richie to finish dumping the

trash into the bin. The claimant testified that Richie was a co-worker working with him. The claimant testified that he reported this event to Mrs. Medlock when he finished his shift and that she told him to go to the doctor right then. The claimant testified that he went to the Cooper Clinic and saw a doctor who diagnosed him with a hernia. The claimant testified that surgery was scheduled but was not carried through because the respondents would not authorize it.

The claimant testified that he had no other insurance so he had to continue working for the respondent but that he brought a doctor's note showing that he should not lift anything over twenty-five pounds. The claimant testified that he was not required to feed the machines anymore but he was just stacking lumber. The claimant testified that stacking was just as bad because you had to get four boards at a time, stack them and this also required bending over which was painful. The claimant testified that he continued to work for the respondent for several months. The claimant testified that in March 2005 he was using the forklift to move pallets out of the way when Mrs. Medlock came out and started yelling at him about not operating the forklift. The claimant testified that he had been told not to operate the forklift since he had reported his hernia but he was tripping over pallets and needed to move them out of the way. The claimant testified that at the end of the day Mrs. Medlock told him that they were going to get rid of him.

The claimant testified that in 1997 he experienced a hernia on his right side but has not had any trouble with it since 1997.

The claimant was asked about a gentleman named Ricky and the claimant stated that he was a foreman for the respondent. The claimant testified that Ricky had used his jacket to wipe up some grease and when he reported this to Mr. Medlock, Mr. Medlock gave him his jacket because Ricky had ruined his. The claimant testified that Ricky is still working for the respondent as of the date of this hearing.

On cross examination, the claimant agreed that when he was talking to Mrs. Medlock on the afternoon of August 9, 2004, he reported to her that he had been having a problem for several months. The claimant also agreed that in his deposition he described the incident of lifting the long boards and feeding them into the machine as the cause of his hernia. The claimant testified that as to the second event when he was lifting trash cans, there were two trash cans, and that he had lifted one trash can and emptied it when he had his problem and that Richie had dumped out the second trash can. As to the weight of the trash cans, the claimant testified that he has not actually ever weighed the trash cans when they have debris in them. The claimant testified that if the trash cans weighed less than eighty to ninety pounds he would not dispute that. The claimant testified that he has not taken any medications for his hernia and he did not miss any time from work as a result of his complaints and groin pain after his doctor's visit. The claimant testified that he has

applied for unemployment but has not begun receiving it. The claimant also testified he has not been looking for work because he is wanting to get his hernia taken care of first. The claimant testified that he subsequently has also sustained a right side hernia and the claimant's attorney indicated that a claim is being filed for this problem but is not at issue at this hearing.

Richie Williams testified that he had worked with the claimant at the respondent's business. Mr. Williams testified that the boards which the different employees would run through the Baker machine or heavy. This witness testified that usually two or three people will be working putting the lumber into the Baker. Mr. Williams testified that there is also a machine which trims boards and that the trimmed pieces fall into trash cans. Mr. Williams stated that these trash cans must then be dumped but was unsure as to what the weight of these trash cans would be filled with debris. Mr. Williams stated that he could dump these trash barrels himself but that he always had some assistance. Mr. Williams testified that it had been almost six months since he had worked for the respondents noting that he had turned the owners of the business into OSHA.

Ricky Engleberg testified that he had been working for the respondent probably eleven years and was a foreman. Mr. Engleberg testified that normally two men load lumber into the Baker. This witness testified that the claimant had never indicated to him that he had injured himself in any way lifting boards into the Baker. Mr. Engleberg was asked if in August 2004 the claimant had reported

that he had injured himself while lifting debris into the trash bin. This witness responded, "No." This witness testified that he was the person the claimant was suppose to report any injuries to if one occurred. Mr. Engleberg testified that the claimant never did talk to him about any kind of problem. Mr. Engleberg indicated that at some point after August 10, 2004, he was aware that the claimant had a twenty-five-pound lifting restriction which was accommodated by the respondent. Mr. Engleberg testified that the claimant was terminated for getting on the forklift after he had been told not to drive that piece of machinery. Mr. Engleberg testified that the trash bins that hold the wood and sawdust at the end of the Morgan machine, when full, would weigh approximately 40 to 45 pounds depending on the type of wood that was being cut. Mr. Engleberg was asked about the lumber that is run through the Baker and he responded that they would weigh approximately 15 to 20 pounds unless they were running timbers which weighed approximately 80 pounds. This witness testified that he has seen people feeding the large timbers into the Baker by themselves, noting that he has not seen the claimant lift these timbers.

Brandon Haynes testified that he has worked for the respondent part time for the past five and a half years, part of this time with the claimant. Mr. Haynes testified that he told the claimant that he was stupid for bringing up stuff because he was going to get fired or laid off. Mr. Haynes testified that the claimant told him that, "well, that's what I want. That's what I want them to do, free money." Mr. Haynes testified that he could not remember

whether this conversation was before or after the claimant had his hernia.

On cross examination, Mr. Haynes testified that the claimant would do anything to get out of work and that he did stupid things that would lead up to getting disciplined. Mr. Haynes testified that he had worked hard to get where he was and that he was not going to turn his back on Mr. Medlock and Mr. Medlock does not turn his back on him.

Anita Sue Medlock testified that she worked for the respondent but was not an owner in the business. Mrs. Medlock testified that she was the office manager and safety director. Mrs. Medlock testified that when she went to talk to the claimant about his hollering he told her that he had hurt his side. This witness testified that she asked the claimant when he hurt his side and he responded that he did not know that it was either a few weeks or a few months ago. Mrs. Medlock testified that she asked the claimant what he did to hurt himself and he responded that he did not know but that his leg hurt. Mrs. Medlock stated that she sent the claimant to the doctor instructing him that they should be open till 4:30. Mrs. Medlock testified that the claimant did not see the doctor until the next morning and that was when they first learned about the hernia and that he had restrictions of not to lift more than twenty-five pounds. This witness testified that the respondent accommodated the claimant's restrictions but that he continually violated his own restrictions to the point where termination was the respondents' only alternative.

The claimant was called to testify on rebuttal and stated that when he was put on the round table job assignment he was constantly having to bend and pick up boards. The claimant testified that it was approximately two to three weeks after he reported his second hernia that he was fired by the respondents.

The medical evidence sets forth that the claimant was seen at the Charleston Family Practice, Cooper Clinic, on August 10, 2004. This office note signed by Dr. Jason Richey sets forth that the claimant was seen and reports that he was lifting something heavy yesterday when he began to hurt in his left inguinal area. This notation sets forth that the claimant reports that he has been hurting off and on in the area for eight months and that he was at work when he initially began to hurt. Upon examination, Dr. Richey notes that the claimant does have a large hernia, left inguinal area that is easily reducible.

Arkansas law sets forth at Ark. Code Ann. §11-9-523 that:

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

(1) That the occurrence of the hernia immediately followed as a result of sudden effort, severe strain, or the application of force directly to the abdominal wall:

(2) There was severe pain in the hernial region:

(3) The pain caused the employee to cease work immediately:

(4) That notice of the occurrence was given to the employer within 48 hours thereafter: and

(5) The physical distress following the occurrence of the hernia was such as to

require the attendance of a licenced physician within 72 hours after the occurrence.

After review of all of the testimony and evidence presented, I find that the claimant has met the criteria in establishing that he sustained a compensable work related hernia on August 9, 2004. The claimant has testified that he was lifting a barrel of wood scraps into a trash bin when he felt a severe pain or pull in his groin area causing him to stop work immediately. The claimant has testified that he notified the respondents that day and the respondents as well as the claimant have testified that he was sent immediately to be seen by a doctor. Dr. Richey, on August 10, 2004, after examination of the claimant, sets forth that he has a left inguinal hernia that is easily reducible. The claimant, therefore, has met the statutory criteria for establishing a compensable hernia and the respondents should pay for the medical treatment for this compensable hernia. The claimant testified that in January 2004 he was lifting lumber and felt a pain in his left groin area but did not report it nor did he stop work at the time or seek medical attention. The Arkansas Court of Appeals in Cooper v. McBurney Corporation, 72 Ark. App. 332, 39 S.W. 3d 1 (2001) found that even though the claimant had reported an earlier date for his compensable hernia, the testimony and evidence established that his hernia, in fact, occurred three days later while he was working for the respondent. The Court stated that the evidence was clear that the claimant suffered the severe groin pain and other related symptoms on the later date reported, the claimant's report of an earlier incident does not establish either medically or

factually that his hernia occurred on that date. See also Pierce v. Little Rock Packing Company, 42 Ark. App. 238, 856 S.W. 2d 317 (1993). In the present case the claimant testified to an event in January 2004 but there is no additional evidence that this caused his hernia and it was not until August 9, 2004, while lifting the trash can that he felt a pain so severe he stopped what he was doing, reported his problem and went to the doctor. The respondents, therefore, should pay for the cost of this claimant's medical treatment for his compensable hernia.

FINDINGS & CONCLUSIONS

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

2. From January 2004 through August 9, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant has proven by a preponderance of the evidence that he sustained a compensable hernia while working for the respondent on August 9, 2004. See discussion above.

4. The respondents should pay for the cost of this claimant's medical treatment for his compensable hernia.

5. The parties have agreed to stipulate to the appropriate compensation rate for this claimant in the event temporary total disability benefits will be needed following any surgery which the claimant may require for his compensable hernia.

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

7. If temporary total disability benefits are to be paid to this claimant as a result of his compensable hernia, the claimant's attorney is entitled to the maximum statutory fee on these benefits.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable hernia while working for the respondent on August 9, 2004.

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

The parties have agreed to stipulate to a compensation rate for this claimant.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE