

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F409452**

<b>KENNETH E. RICKS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>T.M.J. BUILDERS, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>CINCINNATI CASUALTY COMPANY, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED JULY 11, 2005**

Hearing before Administrative Law Judge J. Mark White on June 9, 2005, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Garnet E. Norwood, Attorney at Law, Texarkana, Arkansas.

Respondents represented by Mr. William C. Frye, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On June 9, 2005, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on March 28, 2005, and a Prehearing Order was entered that same day. A copy of the March 28, 2005, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier

relationship existed at all relevant times, including August 31, 2004; that the respondents have controverted this claim in its entirety; and that the claimant earned an average weekly wage of \$281.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable hernia injury; whether the claimant is entitled to temporary total disability benefits; and controversion and attorney's fees.

The claimant contends that he still is not recovered from his injury and is facing the possibility of surgery; that he has not been released to return to work from his treating physician; and that the statutory twenty-six week limit on temporary disability benefits should be tolled by the respondents' controversion.

The respondents contend that the claimant has failed to meet the requirements of A.C.A. § 11-9-523 to prove a compensable hernia claim; and in the alternative, that the claimant is limited to no more than twenty-six weeks of temporary disability benefits.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor,

the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that he ceased work immediately after the alleged occurrence of his hernia.
4. The claimant has therefore failed to prove by a preponderance of the evidence that he sustained a compensable hernia.
5. The respondents have controverted this claim in its entirety.

### **DISCUSSION**

The claimant worked as a construction laborer for the respondent-employer beginning on or about August 30. The afternoon of August 31, he was directed to unload boxes of anchor bolts from a truck. The claimant testified that he first moved the boxes off of the truck to the ground, and then from the ground to a backhoe, and then from the backhoe to a trailer. At some point during this lifting, the claimant testified, he felt a "sharp pain" in his groin. He finished his shift, but he experienced

renewed pain when he went home. Either the next day or the day after, he reported the hernia to his supervisor, and he sought treatment at the hospital within 72 hours of the alleged occurrence.

To prove the compensability of a hernia, a claimant must prove by a preponderance of the evidence:

- (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.

ARK. CODE ANN. § 11-9-523(a).

While the Legislature by Act 796 of 1993 mandated the Commission and the courts to strictly construe the provisions of the Workers' Compensation Act, Ark. Code Ann. § 11-9-704 (c)(3), the Commission has previously held that Act 796 and its requirement of strict construction did not change the interpretation of the hernia

statute. *Ross v. Southwire Specialty Products*, A.W.C.C. E600006 (Jan. 26, 1998).

Though the statute requires a claimant to prove that he ceased work “immediately,” neither the Commission nor the courts have interpreted this language literally. Rather than showing an “instantaneous and continual cessation,” and rather than relying on measurements of time, the claimant need only show that cessation from work became necessary soon enough after the trauma so as to show a causal connection under the circumstances. *Osceola Foods, Inc. v. Andrew*, 14 Ark. App. 95, 685 S.W.2d 813 (1985). I note that the Commission has reapplied this same principle at least once since the passage of Act 796 and its requirement of strict construction. *Grigg v. Swift-Eckrich*, A.W.C.C. E612378 (Nov. 13, 1997); *cf. also Kovach v. Flying Saucer Draught Emporium*, A.W.C.C. E904401 (June 9, 2000), and *Cooper v. McBurney Corp.*, A.W.C.C. E804359 (Dec. 17, 1999).

In the present matter, I am not persuaded that the claimant ceased work soon enough to establish a causal connection. At the hearing, the claimant testified that he felt pain while lifting boxes, and that when he finished moving the boxes he sat down. He agreed with his attorney's characterization that he “sat down the rest of that day,” finished his shift, and went home within a couple of hours. However, at his deposition the claimant said nothing about sitting down and taking a break. Instead, at his deposition the claimant testified that after he finished moving the

boxes he performed other work tasks – first replacing some string, and then shoveling – until the end of his shift.

The only evidence to establish a cessation of work is the claimant's hearing testimony. Given the conflicts between his testimony at the hearing and his deposition testimony, I must find that the claimant has failed to prove by a preponderance of the evidence that he ceased work immediately after the alleged occurrence of his hernia. I therefore conclude that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable hernia. Because I so find, the remaining issues identified by the parties are moot and need not be addressed.

#### **AWARD**

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable hernia. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge