

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407218

DULCE ROYLE	CLAIMANT
HOLLAND NURSING CENTER WEST	RESPONDENT
CANON COCHRAN MANAGEMENT INSURANCE CARRIER	RESPONDENT

OPINION FILED APRIL 22, 2005

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

Claimant represented by MARK FREEMAN, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on February 15, 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 December 3, 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. On June 25, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$227.00 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 from July 21, 2004, to the date the claimant returned to work.
4. Attorney's fees.

In regard to the foregoing issues the claimant contends that she suffered a compensable injury in the form of a hernia while transferring a patient on June 25, 2004, which required subsequent surgery.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a compensable hernia as defined by the Arkansas Workers' Compensation Act.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing ordered marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. The respondents submitted medical records marked Respondents' Exhibit No. 1 and additional documentation marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that she began working for the respondent on April 20, 2004, as a certified nursing assistant and is still employed with the respondent.

The claimant testified that on June 25, 2004, at approximately 6:30 in the morning she was transferring a patient from the bed into a chair. The claimant testified that the patient weighed approximately 250 to 300 pounds and as she was lifting the patient she felt a twinge on her right side. The claimant testified that she knew instantly that she felt a twinge or a pull on her right side in her right lower abdomen. The claimant testified that she worked the remainder of her shift which was only about another thirty minutes and then she drove herself home. The claimant testified that she did not report this event to anyone because after it happened she really did not feel anything after that and that the work she did following this event was just filling out paperwork and emptying some trash. The claimant testified that when she got home she laid down and went to sleep. The claimant testified that when she woke up around 2:00 p.m. and started to go to the bathroom she could hardly walk because she hurt so bad in her right lower abdomen. The claimant testified that she called the respondent's administrator, Nadine Huddleston. The claimant testified that she went to see Dr. Moffett that day. The claimant testified that Dr. Moffett did not do her hernia surgery but that Dr. Eck was her surgeon and that her surgery was performed on July 21, 2004.

The claimant testified that following her surgery she was off work from July 21, 2004, for a period of seven days. The claimant testified that she was released to return to work on light duty by Dr. Eck. The claimant testified that currently she is not under

any work restrictions. The claimant testified that she still has a little bit of numbness in the right side and occasionally she takes a pain med which is prescribed by Dr. Wilson.

The claimant testified that prior to June 25, 2004, she did not have a regular treating physician and was not being treated for any problems with her abdomen and other than having a hysterectomy in 2002 she has never had any other surgeries.

On cross examination, the claimant testified that two other employees were assisting her with lifting the 300 pound patient into her electrified wheelchair. The claimant testified that it was when they were pulling the patient back into the chair that she felt a twinge or a small pull in her side. The claimant agreed that when she felt this twinge she dismissed it because it just kind of went away and she did not think anything about it at the time. The claimant agreed that it was not until seven hours later that she felt some sort of pain and associated it with what had happened at work that morning. The claimant testified that at 2:00 in the afternoon when she began to experience pain she was confident that it was as a result of that morning's event when moving a patient. The claimant testified that she would not dispute a note from Dr. Pickhardt dated June 25, 2004, with a time of 5:40 p.m. where it is noted that the doctor was asked if he had taken the claimant's appendix out. The claimant testified that she was not absolutely positive at 5:40 p.m. on June 25, 2004, if her pain was as a result of that morning's incident moving a patient or if it had something to do with her appendix. The claimant

testified that she does not remember being injured while working for Park Place Care Center or the Edgewood Manner Nursing Home nor does she recall making any report of injury. The claimant agreed that the testimony she gave in her deposition that she had not experienced any work related injuries was not her testimony today. The claimant testified that on June 25, 2004, she realized that she was injured but that it was a little pull or a slight twinge.

Alicia Rae Crook testified that she is currently employed at the Windcrest Health and Rehabilitation Center in Springdale. This witness testified that she and the claimant worked together at least three or four times a week. This witness testified that they would visit and talk during their smoke breaks and that the claimant would talk about her medical problems such as her female problems and that she had mentioned a hernia problem before June 2004.

On cross examination, Ms. Crook testified that the claimant did her job although she was a little slower than the others. Ms. Crook explained that the claimant needed a little bit more help getting people up and was just a little slower. This witness testified that she does not recall the claimant ever favoring her right side saying that she could not do something because she was hurting. Ms. Crook stated that in their general conversations, the claimant would use the word hernia and that this was before June 25, 2004. This witness was asked if she was mad at the claimant for reporting her for having a cell phone at work. Ms. Crook testified that it was not until the claimant's attorney told her

that it was the claimant who reported her that she learned that that was who it was.

The medical records set forth that the claimant was seen by Dr. Gary Moffett on June 25, 2004, at the request of the respondents. Dr. Moffett notes that while at work earlier today, the claimant was transferring a patient from a chair to a bed and during this process felt a pull occur in her right abdomen. Dr. Moffett writes that he is concerned that she may have a hernia and limited her lifting to twenty pounds, noting that he would check her again in one week. There is a night call note dated June 25, 2004, from Dr. Pickhardt's office noting that the claimant has called asking if the doctor had taken out her appendix. Dr. Moffett writes again on June 30 after seeing the claimant that she has a small symptomatic right inguinal hernia and recommended a referral to a surgeon. On July 12, 2004, Dr. Moffett writes that he could feel a hernia in the claimant's right side and recommended a referral to a surgeon. Dr. Gareth Eck operated on the claimant on July 21, 2004, to repair her right inguinal hernia. Dr. Eck writes on August 27, 2004, that the claimant's incision is well healed and her inguinal floor is solid. Dr. Eck released the claimant for activities of daily living.

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

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) There was severe pain in the hernial region;

(3) That the pain caused the employee to cease work immediately;

(4) The notice of the occurrence was given to the employer within forty-eight hours thereafter; and

(5) That the physical distress following the occurrence of the hernia was such as to require the attendance of a licenced physician within seventy-two hours after the occurrence.

After a complete review of the evidence presented as well as testimony of the parties, I find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable hernia while working for the respondent on June 25, 2004. Arkansas law sets out the criteria which must be met in order to prove a compensable hernia and the claimant in this case has, in my opinion, met three of the criteria. The claimant testified that on June 25, 2004, she with help from two other employees was moving a 300 pound woman and felt a pull in her right side, she reported her injury within forty-eight hours to the respondent as well as sought medical attention by a licenced physician within seventy-two hours after the alleged occurrence. The claimant, however, has testified that at the time she was moving the obese patient she felt a slight twinge or a pull in her right side but she did not think much of it and kept on working. The claimant, therefore, has failed to met the criteria of experiencing severe pain in the hernial area as well as the pain

causing the employee to cease work immediately. It is not questioned that this claimant had a hernia which resulted in the need for repair, however, it is seriously questioned that her hernia was as a result of working for the respondent on June 24, 2004. Therefore, this claim for benefits should be denied in its entirety.

#### FINDINGS & CONCLUSIONS

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

2. On June 25, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$227.00 for temporary total disability.

4. The claimant has failed to prove in accordance with Arkansas law that she sustained a compensable hernia while working for the respondent on June 25, 2004. See discussion above.

#### ORDER

The claimant has failed to prove by a preponderance of the evidence that she sustained a work related hernia in accordance with Arkansas law. Therefore, this claim for benefits should be denied in its entirety.

IT IS SO ORDERED.

---

ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE