

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407436

JOHN B. ANDERSON, EMPLOYEE	CLAIMANT
MAVERICK DEVELOPMENT, INC., EMPLOYER	RESPONDENT
FIRSTCOMP INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

**OPINION FILED AUGUST 14, 2006**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Mountain Home, Baxter County, Arkansas.

The claimant was represented by HONORABLE FREDERICK S. SPENCER, Attorney at Law, Mountain Home, Arkansas.

The respondents were represented by HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on June 7, 2006 in Mountain Home, Arkansas. A prehearing order was entered in this case on January 31, 2006. This prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or at the start of the hearing and are hereby accepted:

1. The Employer-Employee-Carrier relationship existed on June 7, 2004 and at all pertinent times.
2. An average weekly wage of \$300 per week entitles the claimant to a total disability compensation rate of \$200 per week and a permanent partial disability compensation rate of \$154 per week, if this claim is found compensable.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Compensability.
2. Reasonable and necessary medical treatment.
3. TTD benefits. (Reserved)
4. Controverted attorney's fee.

In this regard, the claimant contends that he sustained a compensable hernia injury. The respondents contend that the claimant has failed to meet the requirements of Arkansas Code Annotated § 11-9-523 and cannot prove that he sustained a compensable hernia injury.

The record consists of the June 7, 2006 hearing transcript and the exhibits contained therein.

**DISCUSSION****1. Evidentiary Objection**

On page 34 of the hearing transcript, Mr. Spencer objected to Mr. Frye referencing a purported criminal record in asking the claimant if he has experienced difficulty in obtaining a job. I note that the claimant never answered Mr. Frye's question, and I therefore find that Mr. Spencer's objection is moot. Mr. Frye's question will not be considered as evidence in rendering a decision in this case.

**2. Compensability of Hernia Claim**

In order to prove that a hernia is compensable, a claimant must satisfy all of the requirements of Ark. Code Ann. § 11-9-523(a) which requires:

1. That the occurrence of the hernia immediately followed as a result of sudden effort, severe strain, or the application of force 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 present case, Mr. Anderson testified that on the day in question, approximately June 7, 2004, he was in the process of manufacturing floor joists for the first time. Mr. Anderson testified that these joists weighted over 40 pounds apiece, and that he had about 26 joists to do that day. (T. 10). Mr. Anderson testified that as he was lifting a joist, he felt a pain in his groin area by his right leg. Mr. Anderson described the pain as stinging, like a tear. (T. 11). Mr. Anderson testified that he stopped working, put the floor joist down, and said "hold on guys, I just hurt myself." Mr. Anderson testified that he found Pete, his supervisor, who advised him to take five minutes. (T. 11-12).

Mr. Anderson testified that he advised Pete at the end of the five minutes that he was not feeling any better, and Pete put him on different work using a big press to make trusses by another method for the rest of the day. (T. 12).

Mr. Anderson testified that he went to Baxter Regional Hospital the night of his injury. (T. 14-15). Mr. Anderson testified that he also presented to a physician in Dr. Greg Elders' office at some point after the emergency room visit and prior to June 16, 2006. (T. 16). Mr. Anderson was ultimately diagnosed with an indirect inguinal hernia based on a herniogram performed on August 3, 2004.

I am constrained to point out, however, that there is significant conflict between the testimony of the claimant, the documentary evidence offered into the record, and the testimony of the claimant's supervisor, Pete Green. In this regard, I note that the first emergency room report in the record is actually from July 4, 2004, not from June 7, 2004. I also note that the medical records presented at the June 7, 2006 hearing contain no report of the claimant seeing any physician in Dr. Elders' clinic prior to June 16, 2004. In addition, contrary to the claimant's testimony that there were other people present when he got hurt, the Form N in the record indicates that there were no witnesses present that Mr. Anderson was aware of. In addition, that Form N indicates that the injury occurred pushing a buggy of wood and stacking trusses, and makes no mention of lifting a floor joist as described in Mr. Anderson's 2006 hearing testimony discussed above.

In addition, I note that Mr. Green's testimony also appears to be inconsistent both with the testimony of Mr. Anderson and somewhat internally inconsistent as well. To his credit, I note that Mr. Green was attempting to testify at the hearing while under severe acute gastrointestinal distress. At any rate, I note that Mr. Green acknowledged receiving

mention from Mr. Anderson of both a buggy incident and a floor joist incident. On page 46 of the hearing transcript, Mr. Green testified that the buggy incident was a week to a week and a half after the floor joist incident. On page 47 of the hearing transcript, Mr. Green testified that the buggy incident was mentioned to him first, and then later on Mr. Anderson reported the floor joist. Mr. Green testified on page 47 that when Mr. Anderson reported the buggy incident, he did not indicate that he had just injured himself.

In light of the inconsistencies in the 2006 hearing testimony of Mr. Anderson and Mr. Green, the most credible account of events appears to me to be a much more contemporaneous history taken by Dr. Elders on June 16, 2004. Dr. Elders recorded the following history:

32YO gentleman comes in with about a 5-8 day Hx of pain in the right groin. It started rather acutely and he can think of no specific trauma other than about a week and a half ago, he was moving a heavy load of wood w/o any help. He didn't have any pain at that time. (Cl. Exh. 1, p. 1)

In light of the June 16, 2004 history recorded by Dr. Elders, which I find credible, I find that the claimant has failed to establish that his hernia occurred immediately following the result of sudden effort, severe strain, or the application of force to the abdominal wall from either pushing a buggy or from lifting a floor joist. To the contrary, I find from the

history taken by Dr. Elders that the claimant experienced a hernia of undetermined origin with no specific trauma with contemporaneous onset of pain. Consequently, I find that the claimant has failed to establish that he sustained a compensable hernia.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Employer-Employee-Carrier relationship existed on June 7, 2004 and at all pertinent times.
2. An average weekly wage of \$300 per week entitles the claimant to a total disability compensation rate of \$200 per week and a permanent partial disability compensation rate of \$154 per week if this claim is found compensable.
3. The claimant has failed to establish by a preponderance of the credible evidence that he sustained a compensable hernia injury.

**ORDER**

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge