

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM F509936**

**ROGER D. JACKSON,  
EMPLOYEE**

**CLAIMANT**

**BILLY HARRIS D/B/A  
BILLY HARRIS CONSTRUCTION,  
UNINSURED EMPLOYER**

**RESPONDENT NO. 1**

**HOT SPRINGS BUILDING  
& GRADING, LLC,  
EMPLOYER**

**RESPONDENT NO. 2**

**FIRSTCOMP INS. CO.,  
INSURANCE CARRIER**

**RESPONDENT NO. 3**

**OPINION FILED AUGUST 1, 2006,**

Pursuant to a hearing conducted May 4, 2006, before Administrative Law Judge Richard B. Calaway in Hot Springs, Garland County, Arkansas, with

Mr. C. Burt Newell, Attorney at Law, Hot Springs, Arkansas, appearing for the claimant,

Mr. William C. Frye, Attorney at Law, Little Rock, Arkansas, appearing for Respondents No. 2 and 3, and

Mr. Billy Harris, Hot Springs, Arkansas, pro se, failing to appear.

**STATEMENT OF THE CASE**

This was a hearing to address the issues of (1) compensability of the claimant's hernia, under the provisions of Ark. Code Ann. §11-9-523, and (2) the employment relationship that may have existed between the claimant and one of two building contractors, Billy Harris d/b/a Billy Harris Construction and Hot Springs Building and Grading, LLC.

On or about September 9, 2005, the claimant suffered a hernia during his work as a framing carpenter on the job site where both contractors were working. He contended that his hernia was compensable under the Act and that he should recover benefits from Hot Springs Building and

Grading and its carrier, because of his employment either with Hot Springs Building and Grading or with Billy Harris Construction, an uninsured subcontractor of Hot Springs Building and Grading. He also contended that his average weekly wage was \$540.00, based upon a pay rate of \$12.00 an hour for 45 hours per week. The claimant requested benefits, including reasonably necessary medical and related expenses, as well as an attorney's fee for controversion. Other possible issues were reserved.

No one appeared on behalf of Billy Harris Construction, although notice was sent to Mr. Harris at his last known address. Mr. Harris had previously asserted that the claimant was not his employee.

Hot Springs Building and Grading and its carrier contended that the claimant was not an employee of either contractor and, thus, cannot recover from Hot Springs Building and Grading, either directly or as the employee of an uninsured subcontractor. They further contended that the claimant suffered a hernia which was not compensable under the provisions of Ark. Code Ann. §11-9-523.

The record, which included documentary evidence and the testimony of the claimant and James H. Stoval on behalf of Hot Springs Building & Grading, LLC, as well as the deposition testimony of Billy Harris, was closed at the conclusion of the hearing, consistent with the Prehearing Order and Ark. Code Ann. §11-9-715(c)(1)(B).

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. The preponderance of the evidence shows that the claimant was an employee of Hot Springs Building and Grading, LLC, on or about September 9, 2005, when he suffered a compensable hernia arising out of and in the course of his employment.

3. The preponderance of the evidence shows that the claimant received reasonably necessary medical care for his injury which is the responsibility of Respondents No. 2 and No. 3.

4. There was no proof of a contract to recover disputed medical bills and no indemnity benefits were requested at this time. Accordingly, claimant's counsel is not entitled to an attorney's fee on the medical benefits awarded hereinafter, although such a fee may be appropriate for the payment of indemnity benefits to which the claimant may be entitled, since the claim has been controverted in its entirety. Ark. Code Ann. §11-9-715.

## **DISCUSSION**

Claimant's injury took place while the parties were working on a condominium development, known as the Blue Heron Project. Testimony shows that the relationship of the parties to each other and to the developer seems to have been somewhat casual, if not changeable, and is now in dispute. However, the preponderance of the evidence tends to show that the claimant was working as the employee of Hot Springs Building and Grading at the time of his injury. James Stovall, the owner of Hot Springs Building and Grading, testified that his business was not incorporated until July, 2005. He stated that in the spring of 2005 he had entered into an agreement to perform services as James Stovall Excavating on the Blue Heron Project. When his business was incorporated in July,

2005, he continued performing the same services, which he described as grading excavating and not the framing and concrete work which he testified was being done by Billy Harris.

He also stated that in September, 2005, he began paying, on a weekly basis, Billy Harris and workers that he said were employed by Billy Harris. When he began this practice, he got social security numbers on the persons that he was paying and turned the information over to his accountant. He stated that he was doing this as a loan to help Billy Harris until he received a draw. On or about September 22, 2005, Stovall stated that he took over the framing contract and subcontracted it to another subcontractor. Documents show that on September 22, 2005, Hot Springs Building and Grading made a proposal to Blue Heron Condominiums to complete the framing on the job. A second proposal dated September 23, 2005, was submitted by the new subcontractor to Hot Springs Building and Grading to do the framing on the Blue Heron job.

Billy Harris in his deposition testified that he was working as a supervisor and not a framing subcontractor on the job in question. However, Respondent's Exhibit 4 shows a proposal and acceptance from Harris Construction to Tim Hughes, who was associated with the Blue Heron Project, for the framing of the project. However, this document is not signed by any party. The claimant also testified that he was working under George Burks and Billy Harris and that Billy Harris was the supervisor and George was the foreman under him, while James Stovall was over the whole thing.

A review of the testimony reveals that the working relationships among the various individuals was relatively loose and not necessarily well defined. However, by the time of the claimant's injury, it appears that Mr. Stovall, doing business as Hot Springs Building and Grading, LLC, had assumed an employer status as to the claimant and others who may originally have been

employed by Billy Harris. Thus, at the time of the injury, the claimant was functioning as an employee of Hot Springs Building and Grading, LLC.

Where the injury is a hernia, the claimant's burden includes a demonstration that the requirements of the hernia statute are met. The statute requires that the hernia occur immediately as the result of sudden effort, severe strain, or the application of force directly to the abdominal wall; that notice was given to the employer within 48 hours; and that the hernia required the attendance of a licensed physician within 72 hours. These requirements appear to have been met by the claimant's proof. The second and third requirements of that statute are that there was severe pain in the hernial region and the pain caused the employee to cease work immediately. See, Ark. Code Ann. §11-9-523(a)(2) & (3). The claimant's proof substantially meets these requirements as well.

Here, the claimant's testimony was that the hernia occurred relatively early in the work shift at about 8:30 a.m. when he picked up some lumber and felt something pull and a pop in the groin area. His testimony was that he kept working for 30 - 45 minutes and then went to his supervisor, George Burks, and said that he might have to go to a doctor, after which he returned to work and finished the workday with little trouble. He stated that he did not carry as many 2 x 4's as he had prior to the incident. The claimant testified that he went home and by the next morning his symptoms were such that he sought medical attention at the emergency room.

The claimant's description of his discomfort is probably adequate to meet the requirement of severe pain as the law has been applied in recent cases. For example, in Darling Store Fixtures v. McDonald, 54 Ark. App. 60 (1996), testimony that the claimant experienced a slight burning sensation and a sticking or pinching feeling in certain positions was sufficient to meet the statutory requirement of severe pain.

The hernia rules were intended to aid in identifying job-related hernias and not merely to present technical or artificial barriers to recovery. Here, the testimony indicates that the claimant's injury caused him to cease work momentarily to advise his supervisor of the condition although it did not prevent him from working for the rest of the workday. Thus, the cessation of work was prompt but not permanent. However, the claimant's condition required surgery shortly after he had consulted a physician and there is little in the record to suggest that the hernia arose from causes other than his work activity.

At this time, the claimant has not requested benefits for temporary disability or permanent impairment. Thus, a determination of his average weekly wage is not necessary to an award of the medical benefits requested.

**AWARD**

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant.

This award has been controverted as stated above, but the claimant's attorney is not an attorney's fee on the award of medical benefits.

Accrued benefits hereinabove awarded shall be paid in lump sum without discount. This award shall bear interest at the maximum legal rate until paid.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge