

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F511565**

**FREDDIE N. WHITE**

**CLAIMANT**

**GLAZE ENTERPRISES, INC.**

**RESPONDENT EMPLOYER**

**BRIDGEFIELD CASUALTY INSURANCE CO.**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED APRIL 10, 2006**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE CHIP LEIBOVICH, Attorney at Law, Bryant, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Little Rock, Arkansas on February 28, 2006, to determine if the claimant sustained a compensable hernia. A prehearing conference was held on January 24, 2006 and a prehearing order was filed the same day. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on October 5, 2005.
2. The compensation rates are \$200/154.

The claimant contends that he sustained a compensable hernia injury in the course of his employment. The claimant further contends he is entitled to medical benefits and to temporary total disability benefits from October 15, 2005, until December 15, 2005, and attorney's fees.

Respondents contend the claimant did not sustain a compensable hernia and that he was not injured on the job and that he cannot meet the five requirements of the hernia statute. The claim has been controverted in its entirety.

### **ISSUES TO BE LITIGATED**

1. Compensability of a hernia.
2. Medical benefits.
3. Temporary total disability benefits.
4. Attorney's fees.

From a review of 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 made in accordance with Ark. Code Ann. §11-9-704:

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

1. There was an employer-employee relationship on October 5, 2005.
2. The compensation rates are \$200/154.
3. The claimant has failed to prove by a preponderance of the evidence that he has sustained a compensable hernia on October 5, 2005 or on October 14, 2005.
4. Since the claim was not found to be compensable, respondents are not liable for medical benefits, temporary total disability benefits or attorney's fees.

## DISCUSSION

The claimant began his employment with the respondent employer in September 2005, where he worked in the meat department, packaging and stocking meats. The claimant described what he was doing on October 5, 2005, as follows:

Well, I'd been working - - I came in that morning and started off stocking the lunch meats and things like that. And then, when I got all that stocked, we started preparing things that needed to be done for the day and for the next few days - - breaking down cases of chicken, smoked meat parts, and things like that. And I had been moving the cases around in the freezer, getting the cases of the chicken wings and breaking them down and putting them into styrofoam trays and then putting them into a cart to move over so I could take and wrap them and label them.

And, as I was doing this - - as I was wrapping and pulling them out of the cart and wrapping them and getting labels on them, I felt a burning in my left groin area. I mentioned it to Jason.

Jason said, 'It sounds like you've got a pulled muscle in your groin.' (T., p. 10, lines 2-17.)

The claimant testified that he reported the incident to Jason Taylor, a co-employee, and he stopped working for a minute because he felt a burning but he then continued working the rest of the day. According to the claimant, he continued working until October 14, 2005, and the same thing happened again; however, this time, Keith, Jason and Mike Vacca, meat department manager, were present. The claimant testified that he had the same type pain as before. The October 14, 2005, incident happened on a Friday and the claimant continued working throughout the day but did not come in on Saturday and Sunday, or return to work thereafter for the respondent employer. The claimant went to the Open Hands Clinic on Monday, October 17, 2005,

and was diagnosed with a hernia and referred to UAMS. The claimant was diagnosed with a hernia on each side and set up for surgery. According to the claimant, on Tuesday, October 18, 2005, he took his off work slip to Mr. Glaze, the owner of the business. Surgery was ultimately performed and the claimant was later hospitalized for an infection following the surgery but released to return to work on December 15, 2005.

The claimant contends that he sustained a compensable hernia on both the left and right side. Compensability of work-related hernias are governed by Ark. Code Ann. §11-9-523 (Repl. 2005), which provides in pertinent part:

(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) 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, I find the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable hernia while in the course and scope of his employment. I did not find the claimant to be a credible witness. Questions

concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. *Id.* In the present case, I give greater weight to the testimony of Mike Vacca, Jason Taylor and Mike Glaze over the testimony of the claimant.

The claimant testified that he had been moving cases around in the freezer and was breaking chicken parts into individual packages and preparing them to be wrapped and labeled when he felt a burning in his left groin area on October 5, 2005. The claimant testified he told a co-worker, Jason, and stopped working for a minute but then continued working the rest of the day and on through October 14, 2005. The claimant testified that a similar event happened on October 14, 2005, and he further testified that Jason, a co-worker, was present as well as Keith Simpson, and Mike Vacca, meat supervisor. Mike Vacca testified that he learned of the claimant's groin pain on October 14, 2005, when the claimant asked about a doctor. Mr. Vacca's testimony was that he asked the claimant what happened to cause the pain and the claimant told him he did not know what happened. Mr. Vacca unequivocally testified that the claimant did not tell him he had sustained an injury on the job. Further, Jason Taylor, the co-employee, testified that the claimant mentioned his leg pain to him but again stated he did not know how or when it happened. Mr. Taylor and the claimant were part of a work release program at the Federal halfway house where both were living in October 2005.

Mike Glaze, owner of the respondent employer business, testified that he first learned of the claimant's need for hernia surgery on October 19, 2005. Mr. Glaze

asked the claimant if he was just needing time off from work, since he had not heard anything about a work injury. According to Mr. Glaze, the claimant said:

. . . 'Well, I'm going to have to have surgery. I'm going to try to get Medicaid to pay for it, and, if they're not going to be able to pay for it, then I'm going to get you guys to pay for it.' (T., p. 34, lines 18-21.)

Mr. Glaze asked the claimant if he was saying he hurt himself on the job and the claimant replied:

. . . 'Well, I'm not sure when I did this or how I did this, but, you know, it had to be on the job because the only other thing I do is push a broom at the halfway house.' (T., p. 34, lines 24-25; p. 35, line 1.)

Mr. Glaze verified that Mike Vacca is the meat department manager and supervisor of the claimant and if Mr. Vacca was not present, the store manager would be the next in line for a report of an injury. Mr. Glaze explained that Jason was a meat cutter and did not supervise anyone, he was simply an employee who had been there longer than the claimant.

While I did not find the claimant to be a credible witness, he also did not meet the elements required by Ark. Code Ann. §11-9-523 to have a compensable injury. The first requirement is the hernia must immediately result from sudden effort, severe strain or the application of force directly to the abdominal wall. The claimant's allegation was that he had a burning sensation in the left groin while he was twisting and turning and packaging chicken parts and this happened on two different occasions (Oct. 5 and Oct. 14). On October 5, 2005, the claimant testified that he felt the burning sensation and he stopped working for a minute but continued on the rest of the day and worked until October 14 without seeking medical attention. The claimant did not mention stopping

work on October 14, 2005, but testified he finished working the balance of the day but did not return to work thereafter. The testimony of Mike Vacca and Mike Glaze was there was no immediate report of a work injury. In fact, their testimony was the claimant did not know when his injury occurred or how it happened. The claimant did not seek any medical following the October 5, 2005, incident but did seek medical attention on October 17, 2005, following the October 14, 2005, complaint. While the claimant contends that he reported both incidents to Jason Taylor, Mr. Glaze, the owner of the business, testified that Mr. Taylor holds no management position at the employer but is merely an employee and certainly would not be the proper person for a report of injury. I am not persuaded that even if the claimant was found to be credible that he met requirements (1), (4) and (5) of Ark. Code Ann. §11-9-523 for the October 5, 2005, incident to be found compensable and find also that he failed to meet requirements (1), (3) and (4) of Ark. Code Ann. §11-9-523 for the October 14 incident to be compensable.

After careful consideration of all the credible testimony and evidence, I find the claimant has failed to prove he sustained a compensable hernia on either October 5, 2005 or October 14, 2005. While I did not find the claimant to be a credible witness, I also found that he failed to meet the five necessary elements of Ark. Code Ann. §11-9-523. I gave greater weight to the testimony of Mike Glaze, Mike Vacca and Jason Taylor.

Because the claim was not found to be compensable, respondents are not liable for medical benefits, temporary total disability benefits or other benefits associated with a compensable claim.

**ORDER**

The claimant has failed to prove by a preponderance of the evidence that he has sustained a compensable hernia on October 5, 2005 or on October 14, 2005. The claim for benefits is respectfully denied and dismissed.

No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. §11-9-715. Therefore, no attorney's fees are awarded.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**