

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F501576

JAMES A. HEFLEY, EMPLOYEE

CLAIMANT

WAL-MART ASSOCIATES, INC., EMPLOYER

RESPONDENT

CLAIMS MANAGEMENT, INC., TPA

RESPONDENT

OPINION FILED JUNE 29, 2007

Hearing before Administrative Law Judge O. Milton Fine II on April 13, 2007, in Mountain Home, Baxter County, Arkansas.

Claimant represented by Mr. Frederick S. "Rick" Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by Mr. Curtis L. Nebben, Attorney at Law, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On April 13, 2007, the above-captioned claim was heard in Mountain Home, Arkansas. A prehearing conference took place on November 27, 2006. A Prehearing Order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit

1. They are the following, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The employee/employer/carrier relationship existed on February 4, 2005 and February 8, 2005.
3. Respondents have controverted this claim.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1.

The following were litigated:

Claimant:

1. Whether Claimant sustained a compensable injury.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.
3. Whether Claimant is entitled to temporary total disability benefits.

Respondent:

1. Whether Claimant sustained a compensable injury in the form of a hernia and is entitled to benefits.

Contentions

Claimant:

1. The Claimant contends that he sustained a compensable hernia injury and that his injury meets the criteria under Ark. Code Ann. § 11-9-523, entitling him to all related benefits.

Respondents:

1. The Respondents contend that the Claimant did not sustain a compensable injury in the form of a hernia as defined by the Arkansas Workers' Compensation Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including 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, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that the hernia was a compensable injury under Ark. Code Ann. § 11-9-523(a)(3)-(4), in that the evidence clearly shows that (a) he incurred the hernia on February 4, 2005; (b) he did not cease work immediately thereafter; and (c) he did not report the hernia to his employer until February 8, 2005.
4. The reasonable and necessary medical care and temporary total disability issues are moot in light of the above finding.

CASE IN CHIEF

Summary of Evidence

_____ Two witnesses testified at the hearing: Claimant and Larry Griggs, Risk Control Manager for Respondent Wal-Mart at its Mountain Home store.

In addition to the pre-hearing order discussed above, the exhibits admitted into evidence in this case consist of the following: Joint Exhibit 1, a compilation of Claimant's

medical records consisting of three index pages and 74 individually numbered pages; and Joint Exhibit 2, the transcript of the deposition of Claimant taken June 13, 2006 consisting of 74 individually numbered pages, including exhibits thereto.

Testimony

James A. Hefley. Claimant testified that he is 39 years old and has one child. He has a high school diploma and 63 college credit hours. At the time of the injury at issue, he had worked for Respondent Wal-Mart for approximately one year; and he is still employed there. He is a support manager and an ICS team leader, helping stock the store and doing the hands-on count there. Claimant is a former football player—he played one year in college. He is five feet, eleven inches tall and weighs 260 pounds. As Claimant's counsel noted for the record, Claimant is, from my own observation at the hearing, someone of significant size and strength.

In February 2005, Claimant worked as an unloader. These workers unload the supply trucks. A belt is used to aid in the unloading. The merchandise is removed from the belt and organized into 17 separate departments. This includes cases of chemicals such as bleach and detergent.

Claimant testified that on February 8, 2005 at around 5:00 or 6:00, he was taking chemicals off of the belt when he felt a ripping and a tearing. He stated that he had never felt this before, and it scared him. Claimant stated that "I decided there was something really wrong, I needed some help, and I went to the office and asked for some help." He testified that he realized within 15 minutes of experiencing the tearing sensation that something was wrong, and that he went and saw a manager trainee named Tabitha or Misty in the office.

Claimant testified that he raised his shirt, told the trainee that there was a problem, and showed her his stomach. The trainee called Bob, the manager. Cameron Davis drove Claimant to the hospital. He was administered two drug tests—a urine test at Respondent Wal-Mart, and a blood test at the hospital. The emergency room physician instructed him not to do any more lifting or bending until he was treated by a doctor.

Claimant was referred to Dr. Spore, a surgeon, who performed surgery on February 10, 2005. That morning, prior to the surgery Claimant met with Larry Griggs, the safety officer at Respondent Wal-Mart. He signed a Form N, which is Exhibit 1 to Claimant's deposition, Joint Exhibit 2 to the hearing. Claimant testified that he did not fill out the Form N. However, he had Griggs write on the form the information about the burning on February 8.

According to Claimant, someone from the Respondents instructed him the morning of February 10 not to have the surgery because they would not pay for it. However, Claimant proceeded with the surgery. Three weeks after the procedure, he returned to work.

He stated that on February 4, 2005, he experienced something "[j]ust like a muscle pull in the stomach if you're lifting something kinda heavy." Claimant testified that he did not think much about it, that it was simply a strain, but added that it did not happen too often. He said that he experienced no burning at that time and did not stop working.

Claimant testified that he mentioned the February 4 incident to Davis and noted that the sensations on the 4th and the 8th were different—that the first was a "muscle pull" and the second was a "rip and tear."

On cross-examination, Claimant stated that he did not know why Respondents were taking the position that his hernia was related to the February 4 incident. He admitted that the Form N he signed does not reflect an accident on February 8, but stated that this omission was why he had Griggs include the information about the 8th on there. The rest of the form was filled out before Claimant saw it.

With regard to his Associate Statement, which is also part of Exhibit 1 to his deposition in the record, Claimant testified that he signed it as well during his meeting with Griggs on February 10. Claimant stated that he did not fill out any part of the statement. He admitted that while he only reviewed it briefly, he signed it voluntarily.

Claimant testified that some of his medical bills have been paid by his group health insurance. As for his medical records, Claimant stated that he told the treating physicians how he was injured on February 8, and that he was truthful in supplying information to them.

He testified that at the time of the February 8 incident, he had been working as an unloader for 10 to 11 months. He was conditioned to perform that job. His shift was from 4:00 p.m. to 12:30 a.m. As he stated on direct examination, he would unload trucks by taking the merchandise off of the conveyor belt, which is about waist-high, and placing it on pallets bound for separate departments in the store. The merchandise would then be transported on pallet jacks. Claimant estimate that prior to the February 8 incident, which took place around 5:00 p.m., he had moved "thousands" of 40 to 50-pound cases of chemicals at the store. He was 37 years old at the time. He had never before injured himself while moving chemicals.

Claimant stated that in regard to the February 4 incident, which occurred between 9:00 and 10:00 p.m., Christopher Jones called him to help take an entertainment center out to a customer's vehicle. The entertainment center measured about five or six feet by three feet, and was packaged in a carton on the floor in the furniture department. Jones and Claimant loaded it onto a cart with six wheels to take to the vehicle, which Claimant testified was an average-sized truck. When lifting the entertainment center into the truck, Claimant felt a discomfort. He stated that he did not mention it to anyone; he continued to work 15 to 30 minutes until he went on his normal break, and then worked until his usual quitting time. Claimant testified that his discomfort on the 4th was in the upper left side of his stomach, and was on the lower right side on the 8th, where his surgery took place. He stated that he worked the day after the incident involving the entertainment center, February 5, 2005, and then was off on the 6th and 7th before returning to work on the 8th, when the chemical incident occurred.

On re-direct, Claimant testified that he stopped by Wal-Mart to sign the Form N and the Associate Statement because Griggs called him on the morning of the 10th— after the representative of Respondents had called and told him not to undergo the surgery—and had asked him to come by the store. Claimant stated that he was at the store less than two minutes before he talked with Griggs. He testified that at the time, he was nervous about the upcoming surgery, in pain, and had taken pain medication; and that the pain had interfered with his ability to focus. While he had the presence of mind to insist that the information regarding the February 8th incident be added to the Form N, he said that he did not read every word of either document. He stated that he was not aware of the hernia provision of the Arkansas Workers' Compensation Act. Claimant only recalled telling

Davis, who took him to the hospital, about the February 4th incident, and only for comparison to the way he was feeling after the February 8th incident. He did not know why Davis was not called to testify at the hearing.

Under re-cross examination, Claimant admitted that he did not call Davis to testify despite his apparent importance. He also admitted that despite his physical discomfort during his meeting with Griggs on the 10th, he was truthful on the Form N and the Associate Statement and was able to add to the information on the Form N.

When questioned by me, Claimant clarified that when he first saw the Form N, it had the words, "Lifting furniture on the 4th." After Claimant told him to, Griggs added the words "started burning 02-08-05 when taking freight off belt." Then, Claimant signed the form.

Claimant described the entertainment center that he moved on February 4 as having the approximate dimensions of six feet by three feet by five feet. The item weighed 100 to 150 pounds. Claimant testified that he felt the pulling in his stomach when he and Jones lifted the piece off of the six-wheeled dolly into the customer's pickup truck. He and Jones each lifted an end of the entertainment center.

As for the February 8 incident, Claimant testified that at the time he was injured, he was lifting a case of laundry soap. That measured 18 inches to two feet on each side.

On redirect, Claimant again testified that he was exerting himself, picking up the case of soap, when he felt the tear. He also stated that Griggs paraphrased on Form N what Claimant had told him regarding the incident on the 8th. As he did with Davis, Claimant in the meeting with Griggs explained how his February 4 injury was different than the one on the 8th.

Larry Griggs. Called by Respondents, Griggs testified that he has worked for Wal-Mart for 28 years, 14 of which at the Mountain Home store. In February 2005, he held the title of Risk Control Manager. As part of his duties, Griggs fills out workers' compensation paperwork and makes sure that everything is recorded properly for Respondent CMI to send to the Commission. He stated that it is not his decision who does and does not get workers' compensation benefits from Wal-Mart.

He testified that he was aware on February 8 that Davis had taken Claimant to the doctor and Claimant's statement that he had had an incident on February 4 regarding some furniture. It was the trip to the doctor that triggered the preparation of the forms so that they can be sent to the Commission. He testified that the Form N was prepared by him on February 10, prior to Claimant coming to the store, using Claimant's medical request. Griggs stated that this was unusual, but that he did it because he knew Claimant was in pain and awaiting surgery. Claimant had Griggs add the information to the Form N regarding the burning starting on February 8 when he was taking freight off the belt. While he was not sure if the words added at Claimant's behest were Claimant's words verbatim, he believed that they followed his words closely. Griggs stated that as per his practice, he read the forms to Claimant and showed the forms to him. He testified that while he observed Claimant to be in discomfort during their meeting on the 10th, he was in control of his mental faculties, as shown by his request that the additional wording be placed on the Form N.

As for the Associate Statement, Griggs stated that he filled this out in Claimant's presence; but that like the Form N, this was an usual circumstance and was done this way to accommodate Claimant's discomfort and need to get to surgery. As with the Form N,

Claimant's medical request was utilized to fill out some of the form. But he had to interview Claimant to prepare the second page of the statement. Griggs testified that he gave Claimant an opportunity to review the statement before he signed it.

On cross examination, Griggs testified that as of February 2005, he had worked in the workers' compensation area for approximately 12 years; but Claimant's hernia was the first one Griggs was involved with. As a Risk Control Manager, it is his duty to ensure that the store is in safe shape for the customers and associates, and to make certain that the workers' compensation forms are filled out correctly. He keeps the original forms in his file. In reviewing the medical request that he used to prepare the Form N and Associate Statement, Griggs stated that the top portion of the form would have been prepared by Davis, and that Claimant would have signed the request and the medical authorization.

Griggs testified that in his opinion, Claimant is an honest person and a hard worker. He saw Claimant's distended abdomen on February 10—the first time he had ever seen a hernia. Griggs did not hear Claimant state that his abdomen was not distended on the 4th. Claimant did tell him that he experienced pain in his stomach on the 4th. Claimant did not show him his stomach on the 4th, and did not tell him what part of the stomach was hurt on that date.

Griggs disputed Claimant's testimony that the two only met for approximately two minutes on the 10th. He stated that it took longer than that, approximately ten minutes, to go through the paperwork. Griggs reiterated that he read the Form N and the Associate Statement in their entirety out loud to Claimant.

Griggs admitted that a compensable injury will reduce the profit of Wal-Mart. On redirect, Griggs denied that he would lie to keep someone from collecting workers'

compensation. He testified that the request for medical care that was filled out by Davis on February 8 at 6:20 p.m. listed the date of injury as February 4 and mentions nothing about an incident or any problems occurring on the 8th.

Griggs on re-cross examination stated that while he underwent training regarding workers' compensation, he had no idea prior to February 10, 2005 where the law stood regarding hernias. On that date, Griggs was told that Claimant's claim had been denied. He did not remember whether this conversation took place before or after Claimant signed the paperwork.

When questioned by me, Griggs reiterated that he had never been involved with a hernia claim before. Page two of the Associate Statement form has a section concerning hernias; Griggs stated that this was his first experience with the section. He testified that he questioned Claimant to record the answers in this section.

James A. Hefley. Recalled to the stand, Claimant testified that when he went to the store to meet with Griggs on the 10th, he was due at hospital for surgery in 30 minutes. He told Griggs this. He denied that Griggs read the entirety of the documents to him; Claimant stated that there was not time to have done this. He said that he signed both the Form N and the Associate Statement at that time.

He testified that when he was lifting the chemicals on the 8th, the rip occurred as he was turning. The sensation, he described, "was a tear, rip, burning, like it was diarrhea or something, or like blood or something." Claimant said he knew something was wrong, so he set the case down. He said his stomach was distended at that time—it looked as if there was a bubble under his skin, and was quarter-sized. After he stopped work for five to ten

minutes, he went on break and went to the office to report what happened to Tabitha and then to Davis.

Claimant exposed his scar in the hearing, which was just below his navel.

On cross-examination, Claimant admitted that Griggs asked him some questions during their meeting. He also admitted that nothing on the Associate Statement refers to an incident on the 8th; but he stated that was why he had Griggs add the information regarding the 8th on the Form N.

Deposition. As stated above, Claimant's June 13, 2006 deposition was admitted as Joint Exhibit 2. There, when questioned by Respondents' counsel he testified that prior to February 4, 2005, he never had a hernia or any abdominal wall weakness. On the 4th, he was finished unloading the trucks when he was asked to help Christopher Jones load a television stand that was crated and weighed 100 to 150 pounds. The stand was taken from the merchandise shelf, loaded onto a six-wheeled cart that stands one foot off of the ground, and transported to the customer's vehicle, a regular-sized pickup truck. This occurred around 9:30 to 10:00 p.m. Claimant said that while he and Jones were lifting the stand into the truck, which had its tailgate lowered, he felt a little pull in the upper part of the left side of his stomach. He testified that in lifting the stand, he bent his knees and not his waist. Claimant testified that such a pull "happens a lot." He stated that he did not mention the pull to Jones or anyone else, and saw no abnormality in his stomach. Claimant testified that he worked the rest of his shift that day without a problem, stopping only for his 10:30 to 10:45 break.

On February 8, 2005, according to Claimant, he was experiencing no problems or abnormalities. When he was taking chemicals off of a waist-high conveyor belt that was

being used to unload a truck of merchandise, he “felt something tear and rip. And it felt like [he] was bleeding inside.” The box he was lifting at the time he felt the rip weighed 40 to 50 pounds. The motion he was performing at the time was to lift the box from a standing position and twist to the right. The ripping sensation was just below and to the right of his navel and came as he picked up the box. He stated that he reported the injury to a manager trainee and that Davis took him to the hospital.

At the emergency room, Claimant disrobed for examination. He stated that he saw the area of injury, which he described as a “bulge” and “a big old bubble thing.” When he pressed it, he felt the same burning sensation that he had when he lifted the case of chemicals.

Claimant testified that at the time he filled out the Form N, he had taken pain killers. He did not recall if medication impaired his judgment. But he was in pain at the time. He signed the form after it was filled out. He testified that he did not know who filled out the form, including the words “started burning on 02-08-05 when taking freight off belt”—which contradicts his hearing testimony that he supplied this wording to Griggs.

As for the Associate Statement, Claimant testified that he signed the document, but did not know who filled it out. Prior to going to the store to sign the documents, he received a call from a lady telling him that Respondents were not going to cover the surgery and not to proceed with it. However, he did proceed with the surgery, and was off of work for three weeks thereafter.

When questioned by his own attorney, Claimant stated that he read the words “started burning on 02-08-05 when taking freight off belt” before he signed the Form N; but he did not know why someone put February 4, 2005 as the date of the accident. He

testified that he was okay after the February 4 incident involving the entertainment center, that he simply had a pulled muscle.

Records—Medical

Joint Exhibit 1. The medical records of Claimant that were introduced at the April 13, 2007 hearing and are part of Joint Exhibit 1 reflect the following:

On February 8, 2005, Claimant presented to the emergency room at Baxter Regional Medical Center with a hernia complaint. He described the burning pain as being in the umbilicus and groin areas that was made worse while working, but not causing vomiting, nausea or fever. He was prescribed an antibiotic and pain medication, instructed to get rest and not do any lifting, and was referred to a surgeon, Dr. William Ford, at the Ozark Surgical Group.

The February 9, 2005 admission chart for Claimant from Ozark reflects the date of injury as February 4, 2005 and the accident occurred at work. The accident is described as follows in the record:

It happen[ed] when I was helping a customer with a entertainment center me and a fellow associate (Chris) when we were putting in the truck [I] felt something in my stomach a burning feeling.

The accident is later described in the chart in the following manner:

Happened @ work last week. Went to work last noc [night] for a couple of hours & area began burning & hurting, so pt. went to ER.

The chart also contains the following narrative from Dr. James Spore on the 9th:

This patient is a 37-year-old white male who presented to the emergency room last evening for a complaint of protrusion, pain, and burning at his umbilicus. The patient states that he had onset of burning and tearing sensation at work approximately 1 week ago which, when he returned to work last evening, markedly increased. It was associated with nausea without vomiting. The patient does admit to some diarrhea over the last

week to 10 days. He reports no fever, chills, or sweats. He denied dysuria, frequency, or hesitancy.

He was diagnosed with an incarcerated umbilical hernia and recommended for a surgical hernia repair with mesh. Dr. Spore performed the surgery on February 10, 2005.

Records-Non-medical

Form N. As stated above, the form, part of the exhibit to Claimant's deposition, reflects that the accident took place on February 4, 2005 at 9:00 p.m., and that the employer was notified of it on February 8, 2005 at 5:00 p.m. His injury was listed as a right side hernia, and the cause was "lifting furniture on 4th, started burning 02-08-05 after taking freight off belt."

Associate Statement. The statement, a Wal-Mart form document and part of the exhibit to Claimant's deposition, reflects that the injury occurred on February 4, 2005 at 9:00 p.m. The precipitating incident is described as "lifting entertainment center and felt a pain in stomach." The injury was reported to "Mitzie" on February 8. It was not reported sooner because "Hurt, Didn't think it was that bad." He described that he was still hurting, that it he was having a burning sensation in the right side of his stomach. Claimant states that he did not stop work at the time of his injury.

ADJUDICATION

A. Compensability

Claimant has alleged that he incurred a compensable injury in the form of an umbilical hernia on February 8, 2005.

Arkansas Code Annotated § 11-9-523(a) (Repl. 2002), which the I find applies to the analysis of this injury, provides that in order to establish a compensable hernia, the claimant must prove the following:

- (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.

As Respondents concede, and as the medical evidence clearly shows, Claimant had an umbilical hernia when he presented to Baxter Regional Hospital on February 8. The claimant contends that the hernia occurred on February 8. For the reasons discussed below, the preponderance of the credible evidence establishes that the hernia instead occurred on February 4, and is not compensable because he did not cease work immediately and did not give his employer notice of the occurrence within the requisite 48 hours.

Claimant testified in his deposition and at the hearing that he only felt a muscle pull on the 4th when he helped Jones load the entertainment center into the customer's truck. The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and

determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

In light of the balance of the evidence in this case, and after having had an opportunity to observe the witness, assess his demeanor, and compare his hearing testimony with his deposition testimony, I simply cannot credit him on this point. He testified that he did not feel burning in his abdomen until on the 8th. But his medical records, quoted above, show that when he presented for treatment both at Baxter Regional and at Ozark on February 9, he attributed the hernia to the lifting of the entertainment center on the 4th, and described feeling a burning and tearing sensation occurring on that date as well.

This makes more sense than Claimant's theory of the case when examining the activities he was performing on the 4th versus the 8th. He contends that the hernia occurred on the 8th when he was lifting a case of liquid detergent weighing 40 to 50 pounds off of the conveyor belt to place it on the pallet to deliver to the applicable department inside the store. As he admitted on the stand, this is an action that he had performed "thousands" of times. However, on the 4th, he and another associate were lifting an entertainment center weighing 100 to 150 pounds into the back of a pickup truck.

Both Claimant and Griggs testified at the hearing that the words "started burning on 02-08-05 after taking freight off belt" were added to the Form N at Claimant's behest prior to him signing it. However, Claimant in his deposition denied supplying those words to Griggs. Regardless, this wording does not exclude the scenario that there was burning on the 4th as well, but that with the lifting of the detergent on the 8th the burning returned. This

comports with Claimant's multiple statements in his medical records that he experienced burning on the 4th, and in particular his second statement in his Ozark chart that burning on the 8th led him to seek treatment.

I also note that Claimant testified that his sensation on the 4th was in the upper left part of his abdomen, while on the 8th it was in the lower right portion. But again, I credit his more contemporaneous statements to the doctors in his records, which contain no such differentiation and which point to the lifting of the entertainment center on the 4th as the cause of the hernia.

The evidence shows that Claimant's hernia occurred on February 4, 2005, when Claimant first experienced tearing and burning. Moreover, the evidence adduced at the hearing conclusively showed the following:

1. Claimant did not cease work immediately on the 4th following the occurrence of the hernia. His uncontroverted testimony was that he continued to work until his 10:30 p.m. break, and then finished his shift that night.
2. Wal-Mart did not have notice of Respondent's hernia until 5:00 to 6:00 p.m. on February 8 at the earliest, when he reported it to the manager trainee and then Cameron Davis. This is much longer than 48 hours after he suffered the hernia.

Because of these findings alone, Claimant has not met the requirements set forth in Ark. Code Ann. § 11-9-523(a)(3)-(4), which he must. See *Ayres v. Historic Preservation Assoc.*, 24 Ark. App. 40, 747 S.W.2d 587 (1988)(addressing both elements). Hence, he has not proven that his hernia is a compensable injury.

In rendering this decision, I am not unmindful of *Cooper v. McBurney Corp.*, 72 Ark. App. 332, 39 S.W.3d 1 (2001). In *Cooper*, the Arkansas Court of Appeals ruled that the Commission improperly found that the claimant had incurred a hernia on April 11, 1998 instead of April 13, 1998. The claimant testified that his injury on April 11, due to “pulling and setting 20 foot tubes,” was only a “‘stretching’ pain.” *Id.* However, he did not feel burning until the 13th, “while he was lifting bags of refract.” *Id.* Claimant’s statement to two medical providers and the insurance adjustor was consistent with that testimony, which the court obviously regarded as significant.

In the claim at bar, however, Claimant’s statements in his medical records differ markedly from his testimony. Again, while he testified that he only experienced a muscle pull on February 4, and no tearing or burning until the 8th, the records reflect that he stated that he experienced both tearing and burning on the 4th.

In the last paragraph of the majority opinion, the *Cooper* opinion reads:

Nevertheless, because the evidence is clear that Cooper suffered the severe groin pain and other related symptoms only on April 13, and because, even as we give it its greatest probative force, Cooper’s report of the earlier incident does not establish either medically or factually that his hernia occurred on that date, we hold that the Commission erred in failing to find Cooper’s hernia compensable and refusing to award benefits.

Id. This is clearly distinguishable from Claimant’s situation. Again, as his statements in his medical records show, his hernia symptoms began on the 4th. Furthermore, these statements, given their “greatest probative force,” show that the hernia began on that date with the onset of the tearing and burning sensations. The hernia, having occurred on February 4, 2005 and not four days later, is thus not compensable under the law.

B. Balance of Issues

Because of the above finding, the other issues litigated at the hearing— whether Claimant is entitled to reasonable and necessary medical care and temporary total disability benefits—are moot and will not be addressed.

CONCLUSION

Claimant bears the burden of proving by a preponderance of the evidence that his hernia is compensable. He has been unable to do this. Therefore, his claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Administrative Law Judge