

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F603875**

**JAMES PIPPEN, EMPLOYEE**

**CLAIMANT**

**EMERGENCY AMBULANCE SERVICE, INC., EMPLOYER**

**RESPONDENT**

**COMMERCE & INDUSTRY INSURANCE CO./  
c/o AIG CLAIM SERVICES (TPA),  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED MARCH 9, 2007**

Hearing before Administrative Law Judge Barbara W. Webb on December 14, 2006, in Pine Bluff, Jefferson County, Arkansas.

The claimant was represented by Mr. Ken Harper, Attorney at Law, Monticello, Arkansas.

The respondents were represented by Ms. Carol Worley, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on the above-styled claim on December 14, 2006 before Administrative Law Judge Barbara W. Webb. A Prehearing Order was entered in the case on October 18, 2006. The Prehearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at this hearing. A copy of the Prehearing Order was made Commission's Exhibit No. 1 to the hearing record. The following stipulations as submitted by agreement of the parties as applicable to this claim in the Prehearing Order and as amended on the record are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer-employee-carrier relationship existed on March 28, 2006.

3. The claimant earned an average weekly wage of \$456.02, which would entitle him to a temporary total disability rate of \$304.00 per week and a permanent partial disability rate of \$228.00 per week if the claim is found compensable.

4. The claimant was released to return to work on May 22, 2006 with no restrictions. By agreement of the parties, the issues to be presented at the hearing are as follows:

1. Whether claimant was engaged in employment services at the time of his injury and if so, compensability of claimant's alleged hernia injury under the Workers' Compensation Act.

2. Claimant's entitlement to medical treatment and payment of past treatment.

3. Claimant's entitlement to temporary total disability and all other benefits allowed under the Act.

4. Controversion and attorney's fees.

The record consists of a one volume transcript of the December 14, 2006 hearing, consisting of the testimony of James Pippen, Roger Daggett, and John Badgley, and all documentary evidence consisting of Commission's Exhibit No. 1 (Prehearing Order); Claimant's Exhibit No. 1 (medical records and bills); Respondent's Exhibit No. 1 (medical records); and Respondent's Exhibit No. 2 (non-medical records). In addition, I have blue-backed a copy of a letter dated December 21, 2006 from Respondent's counsel advising the Commission of the stipulation between the parties regarding the applicable compensation rates in this case. The letter will be incorporated by reference and made a part of the record of this proceeding.

**FACTUAL BACKGROUND**

The claimant contends he sustained a compensable injury to his abdomen and is entitled to past and future medical benefits, temporary total disability benefits until the date of maximum medical improvement, and attorney's fees.

The respondents contend the claimant did not suffer a compensable injury and was not performing employment-related services at the time of his alleged injury. Further, respondents contend the claimant cannot meet the elements necessary to establish a compensable hernia under the Arkansas Workers' Compensation Act. Alternatively, respondents contend that claimant was released to return to work on May 26, 2006 and any entitlement to temporary total disability benefits would stop at that time.

The claimant is twenty-six years old. He completed an applied science degree at University of Arkansas at Monticello. He is certified as an Electromechanical instrumentationist and an EMT. He worked in construction until he received his EMT certification. He has worked as an EMT for four years. His job duties include driving the ambulance, lifting patients, and helping the paramedic as directed. He testified that on March 27 or 28 of 2006, he was lifting a patient when he felt something pull towards his groin area. He explained that he felt like he pulled a muscle because it wasn't really hurting. He reported the incident to his supervisor, Roger Daggett, who suggested that he get it checked out. He explained that within thirty minutes of the incident, he went to the ER and was evaluated by the ER doctor at Chicot Memorial in Lake Village. He was released to go back to work. After two days of scheduled off-time, he returned to work on Friday of that week. He testified that he worked Friday through Sunday. He testified that he was lifting a patient on Sunday when the pain got worse. He reported to his supervisor that he could

not work. He described the pain as “a popping, tearing” in his groin and lower abdomen area. He continued to work on Sunday because he could not find someone to cover for him. He explained that he worked Monday because they were still unable to find relief, but that it was very painful. He set an appointment with his doctor on Monday evening and was seen by Dr. Simon on Tuesday morning, April 4, 2006. He was taken off work and referred to a surgeon, Dr. Wilson. He was seen by Dr. Wilson on April 5, 2006 and scheduled for surgery on April 12, 2006. Following the surgery, he was released to return to work on May 22, 2006. He returned to work.

On cross-examination, the claimant admitted that he was a hunter, but denied that he was “going through great gyrations” to turkey hunt on April 1. He explained that he had requested vacation before he was hurt to turkey hunt, but was told he couldn’t have his vacation at that time. He denied telling his supervisor that he would “do something” so that he could be off for turkey season. He explained that he did not turkey hunt in the spring of 2006 because he was suffering from his hernia. He explained that there were no medical records from his Lake Village emergency room visit because records were not kept on an examination of an EMT while he was on duty. He explained that he went to see his regular family doctor at Monticello Medical Clinic and did not go to the Workers’ Comp doctor. He currently works for Southeast Arkansas EMS.

Roger Daggett testified on behalf of the Respondents. He was the claimant’s immediate supervisor. He testified that the claimant did not report an injury to him on March 27, 2006. He explained the claimant had traded some days in order to go turkey hunting on April 1 or 2, 2006. He testified that it was an ongoing joke that the claimant bellyached and whined about always having something wrong with him. He said the claimant reported

to him that he had hurt himself at one time but that he denied it was work related. He explained that he did not fill out an incident report because the claimant never said that he had hurt himself on any incident. The claimant ceased working on March 28, 2006 and did not tell him that he was not returning due to problems he was having with a hernia. He testified that the claimant told him that he went turkey hunting. He testified that the claimant had reported to him a pain in his groin area but the claimant could not specifically tell when he was hurt. He testified that the claimant never requested medical attention for a hernia. He received a handwritten note from the claimant but never saw a doctor's note.

He explained that he accompanied the claimant to the ER in Lake Village for the doctor to look at the claimant's stomach at the end of March 2006. He acknowledged that the claimant "may have previously" told him that he pulled something lifting a patient, but told him that he could not pinpoint any specific date, time, or incident. He explained that the claimant acted like he was sore but declined to do paperwork. He explained that the claimant was an avid turkey hunter and always had turkey stands, feeders, and stuff in the back of his truck. He said that he asked the claimant if he wanted to file a claim and see a workers' compensation doctor. He said the claimant responded that he just wanted a doctor to look at his stomach and did not want to be off work or file a claim. He told the claimant that if he needed to fill out paperwork, he would fill it out and send it to Pine Bluff.

John Badgley, the operations manager for Emergency Ambulance Service, testified that the claimant came to him on April 4<sup>th</sup> or 5<sup>th</sup> after the claimant had seen a doctor and reported a workers' compensation injury for a hernia but could not answer any questions regarding when or how or what he was doing when it happened. The claimant reported that he did it at work but did not tell him when or tell him that it happened while lifting a patient.

At that time, he assisted the claimant in filling out the paperwork. He attempted to set up an appointment with Dr. Wilkins, the workers' compensation doctor, but the claimant did not go see him since he was already being treated by his personal doctor. He told the claimant that his claim would be kicked back since he couldn't tell him how, when, or where it happened and he responded "We're going to try it anyway". He told him that he was supposed to have surgery but did not tell him when it was.

On rebuttal, the claimant testified that he told Daggett that "I was lifting and I think I pulled something". He explained that his conversation with Badgley took place over the phone. He denied that Badgley offered to send him to the company doctor and would have gone if that had been offered. He explained that he advised Badgley about the surgery before he had it. He testified that he told Badgley how he got hurt. He testified that he did not go to Pine Bluff and that the paperwork was filled out by Badgley over the phone.

The medical records in this case begin with the claimant's visit to Dr. Simon, his family doctor on April 4, 2006. He was diagnosed with a reducible inguinal hernia. He was referred for surgery with Dr. Wilson and restricted from heavy lifting. On April 10, 2006, he was evaluated by Dr. Wilson. He was scheduled for surgery for April 12, 2006 for left inguinal hernia repair with mesh. He successfully underwent surgery on April 12, 2006, returned to Dr. Wilson on May 10, 2006, for a post-op evaluation, and was returned to work on May 22, 2006, with no restrictions.

## **DISCUSSION**

### **COMPENSABILITY**

Pursuant to Ark. Code Ann. § 11-9-523(a), a hernia is compensable if the following factors are established to the satisfaction of the Commission:

- (1) 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) the pain caused the employee to cease work immediately;
- (4) notice of the occurrence was given to the employer within forty-eight (48) hours thereafter;
- (5) 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 instant case, I find that the claimant sustained a compensable hernia while performing employment services. The case revolves largely around the credibility of the claimant. Based on the totality of the evidence, I find that the claimant's testimony is consistent with the medical records offered and credible. Moreover, the only evidence offered to challenge the credibility of the claimant was the testimony of Roger Daggett. After evading the questions posed by claimant's counsel, Daggett reluctantly testified that the claimant had sought medical treatment for stomach pain at the time in question. He admitted that he could not testify as to which days the claimant actually worked and whether the claimant was off turkey hunting at the time he claimed the second injury occurred. Badgley testified that the claimant reported a work-related injury for a hernia on April 4 or 5.

While the claimant first experienced problems with his stomach while lifting a patient at the end of March, I find that the credible evidence demonstrates that the claimant suffered immense pain after lifting a patient such that he could no longer work on April 2, 2006. He reported both instances to his supervisor within forty-eight (48)

hours thereafter and sought medical treatment within seventy-two hours of each incident.

In Torres v. Superior Industries, 2006 AWCC 126, Full Commission Opinion filed July 21, 2006 (F509424), the Commission observed that the Arkansas Court of Appeals has held that the Commission cannot be hypertechnical when construing the statute regarding hernia, citing Darling Store Fixtures v. McDonald, 54 Ark. App. 60, 922 S.W.2d 748 (1996). In Torres, the Commission awarded benefits even though the claimant admittedly did not seek medical attention within 72 hours. The Commission relied on the decision in Cagle v. Fabricating & Steel, Inc. V. Patterson, 42 Ark. App. 168, 856 S.W. 2d 30 (1993). In Cagle, the Court of Appeals noted that “A claimant need not prove that he was actually attended by a physician within 72 hours after the injury; instead, the statute provides only that the physical distress following the occurrence of the hernia was such as to require the attendance of a physician within the 72-hour-period. Id. In Torres, the claimant did not seek medical attention for two months but continued to experience increasing stomach pain and a “bulging navel” such that he would take vacation leave when the pain became too severe for him to work. Similarly, in Ayers v. Historic Preservation Assoc., 24 Ark. App. 40, 747 S.W.2d 587 (1988), the Court of Appeals found that where the claimant immediately reported what he perceived to be a hernia, made arrangements to see a physician as soon as practicable thereafter, and upon seeing a physician, was diagnosed affirmatively with a hernia for which surgery was required, the claimant established by a preponderance of the evidence that he had complied with the statutory requirements of Ark. Code Ann. § 11-9-523.

In Price v. Little Rock Packaging Co., 42 Ark. App. 238 , 856 S.W.2d 317 (1993), the Court of Appeals considered the compensability of a hernia claim where the claimant attributed his pain to an earlier fall when he sought medical treatment two months later after experiencing pain in his groin area after lifting loads of paper. The Court noted that the Act does not require an immediate diagnosis or that the doctor's history contains the "gory details of the occurrence". See, Siders v. Southern Mattress Company, 240 Ark. 267, 398 S.W.2d 901 (1966). The claimant is "not required to give notice that he has a hernia --he is not a doctor--the statute merely requires that appellant give notice if the occurrence which resulted in a hernia." Id.

In Cooper v. McBurney Corporation, 72 Ark. App. 332, 39 S.W.3d 1 (2001), the Court of Appeals awarded benefits and overturned a decision of the Commission denying the claimant benefits for a hernia where the Commission found that the hernia occurred on the earlier date in which claimant first experienced pain but failed to prove the pain was "severe", did not cease work immediately, did not notify his employer of the injury within 48 hours, and did not visit a physician within 72 hours. In Cooper, the claimant testified that he first noticed the pain on a Saturday night while working and that it bothered him occasionally but that he kept working. He explained that two days later on Monday night, he felt pain "like a burn" that became a "gut-twisting pain up in his stomach" and felt swelling in the groin. The Court noted that the fact that the claimant had listed the earlier date as the date of injury was of no import in light of the Price decision. Noting that there was not equivalent medical evidence as in the Price case, i.e., the treating physician's opinion to a high degree of certainty that the hernia occurred

when he felt groin pain, the Court found that the clear evidence demonstrated that Cooper felt the severe groin pain and other related symptoms on the later date. Id.

The claimant in the instant case, like Cooper, distinguishes the “pulling” pain he felt earlier from the severe pain he felt on the following Sunday. He also noted the presence of a bulge on his second doctor’s visit which was not present during the evaluation in the emergency room.

The Respondents argue that the claimant was looking for a way to get off work to go turkey hunting. However, the respondents offer no credible evidence to refute the claimant’s testimony that he worked on Friday through Sunday, as opposed to turkey hunting. If claimant had not worked on Friday through Monday, as testified by claimant, the respondents could have established through time records or witness testimony that claimant was off work.

Respondents further argue that claimant never reported a specific work-related incident which led to his injury. However, claimant testified that he reported both instances to his supervisor when they occurred and told John Badgley how he was hurt at the time he filed his claim. Daggett admitted to accompanying the claimant to the ER at Chicot Memorial in Lake Village with stomach complaints that began at work, but testified that he did not report the injury as a work-related injury because the claimant did not want to file a report or miss work after being told by the ER physician that it was simply a muscle strain. Badgley admitted the claimant told him that the hernia injury happened at work, but did not tell him when the incident occurred.

In the instant case, the claimant reportedly felt a pulling pain in his stomach after lifting a patient which he immediately reported to his supervisor and sought medical

attention and was released to return to work. Five days later, he felt immense pain in the left groin area after lifting a patient, reported the incident to his supervisor, and sought immediate medical attention which resulted in surgery to repair a left inguinal hernia. It is clear from the preponderance of the evidence that the claimant has complied with the statutory requirements of Ark. Code Ann. § 11-9-523.

### **MEDICAL EXPENSES AND TEMPORARY TOTAL DISABILITY BENEFITS**

Ark. Code Ann. § 11-9-508 states that employers must provide all medical treatment that is reasonably necessary for the treatment of a compensable injury. What constitutes reasonable and necessary treatment under the statute is a question of fact for the Commission. Ganksy v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996); Geo Specialty Chem., Inc. v. Clingan, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Respondents are responsible only for medical services which are causally related to the compensable injury. Post-surgical improvement is a relevant consideration in determining whether surgery was reasonable and necessary. Winslow v. D & B Mech. Contractors, 69 Ark. App. 285, 13 S.W.3d 180 (2000).

Ark. Code Ann. § 11-9-523 (b)(1) provides:

that in every case of hernia, it shall be the duty of the employer forthwith to provide the necessary and proper medical, surgical, and hospital care and attention to effectuate a cure by radical operation of the hernia, to pay all reasonable expenses in connection therewith, and, in addition, to pay compensation not exceeding a period of twenty-six (26) weeks.

Based on the preponderance of the credible evidence, I find that the medical services provided to the claimant by and at the direction of Dr. Simon and Wilson, including the

surgical repair of the claimant's compensable hernia, represent reasonably necessary medical services under Ark. Code Ann. § 11-9-523(b)(1) and § 11-9-508.

I further find that the claimant has proven that he was rendered temporarily totally disabled, as the result of the effects of his compensable hernia for the period beginning April 4, 2006, and continuing through the date he returned to work on May 22, 2006. Because the claimant returned to work following his surgery, it is not necessary to consider the limitation on compensation benefits imposed by § 11-9-523 (b)(1).

### **CONTROVERSION AND ATTORNEYS FEES**

Based on my review of the evidence in this case, I find that respondents have fully controverted payment of all temporary total disability benefits from the last date worked, i.e., April 3, 2006 until May 22, 2006. I find that the claimant's attorney is entitled to a maximum statutory attorney's fee on the disability benefits awarded to the claimant as a result of the findings herein, one-half of the fee to be paid by the claimant and one-half of the fee to be paid by the respondents in accordance with Ark. Code Ann. § 11-9-715 (Repl. 2002).

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer-employee-carrier relationship existed on March 28, 2006.
3. The claimant earned an average weekly wage of \$456.02, which would entitle him to a temporary total disability rate of \$304.00 per week and a permanent partial disability rate of \$228.00 per week.

4. The claimant was released to return to work on May 22, 2006 with no restrictions.
5. The claimant has proven by a preponderance of the evidence that he was engaged in employment services at the time of his injury.
6. The claimant has proven by a preponderance of the evidence that he suffered a compensable hernia injury under §11-9-523 and other applicable provisions of the Workers' Compensation Act.
7. Claimant had proven by a preponderance of the evidence that the medical treatment by Dr. Simon and Dr. Wilson, including the hernia surgery, was reasonable and necessary and related to his compensable work-related injury.
8. Claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from the date he last worked, April 3, 2006, until the date he was released to return to work, May 22, 2006.
9. Claimant is entitled to the maximum attorney's fee on the disability benefits awarded herein, one-half to be paid by the respondents and one-half to be withheld from the claimant's award of benefits.

**AWARD**

The respondents are hereby directed and ordered to pay benefits and attorney's fees in accordance with the findings of fact and conclusions of law set forth herein.

**IT IS SO ORDERED.**

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**BARBARA WEBB**  
Administrative Law Judge