BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F602530

WILLIAM T. SMITH, EMPLOYEE	CLAIMANT
PILGRIM'S PRIDE CORPORATION, EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES, CARRIER/TPA	RESPONDENT

OPINION FILED JANUARY 19, 2007

Submitted on the record before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on January 17, 2007.

Claimant represented by the HONORABLE RICHARD H. MAYS, Attorney at Law, Hebert Springs, Arkansas.

Respondents represented by the HONORABLE MICHAEL R. MAYTON, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits and attorney's fees.

At issue is whether or not the claimant developed a compensable hernia pursuant to Ark. Code Ann. §11-9-523. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on February 20, 2006 at which time the claimant was earning sufficient wages to entitle him to a compensation rate of $246.00/$185.00, in the event this claim is found to be compensable.

The claimant contends he developed a hernia on February 20, 2006 as a result of a lifting incident at work. He seeks payment of medical expenses, temporary total disability benefits from February 24, 2006 to April 26, 2006 and attorney's fees.

The respondents contend the claimant developed a hernia outside the course and scope of his employment. Alternatively, the respondents contend the claimant cannot meet his burden of proving

that he ceased work as a result of the injury.

The following were submitted without objection and comprise the evidence of record: the parties' exhibits contained in the transcript.

The following witnesses testified at the hearing: the claimant and his fiancee, Susan Parks who is also a security officer with the respondent-employer; Chris Paden, foreman; and Sherry Chapman, the plant nurse. Ms. Parks corroborated the claimant's testimony.

The claimant, age 47 (D.O.B. October 7, 1959) began work for the respondent-employer in December, 2005 as a floater being assigned to various jobs in the plant as needed. (Tr. p. 8, 16-17). On February 20, 2006, the claimant was working on a conveyor line handling chickens weighing 8-12 pounds. The equipment failed and the chickens began to pile up. The claimant was pulling chickens when he felt a sharp stinging pain in his groin (Tr. p. 8-10). He stopped work and went to the nursing station (Tr. p. 9). The office was closed so he went to the bathroom before returning to work on the line. Since it was close to the end of the shift, the claimant did not report the incident in the hopes that the pain would subside and his attendance record wouldn't be docked for leaving early.

That night the claimant's pain increased and he reported the injury to the plant nurse the following morning. The nurse made him take a drug test which he passed but she sent him back to work. He returned to her office complaining of pain several times but the nurse took no action. The claimant contacted his union representative and obtained permission to see a physician.

Dr. Reddy diagnosed a hernia and recommended light duty work (no lifting over 15 pounds) until the claimant could see a surgeon.

The next day the claimant was assigned light duty pulling bags in the box room. At noon the claimant was called into the nurse's office and was informed that the claim was being denied and he would no longer be provided with light duty.

The claimant had surgery at UAMS on March 31, 2006. He tried to return to work at light duty but the employer refused to let him work. After the claimant hired an attorney, he was allowed

to return to work on April 27, 2006.

On cross-examination respondents' counsel emphasized that in his deposition, the claimant indicated he did not cease work after the injury and he did not report the injury to anyone before leaving to go home, (Tr. p. 17-18).

Chris Paden testified he was the claimant's supervisor. He was notified of the claimant's injury on February 21, 2006 and took the claimant to the nurse's station. However, it is Mr. Paden's understanding that the claimant had hurt himself outside of work (Tr. p. 27-30).

Sherry Chapman testified that the nursing station was closed on February 20, 2006 before the end of the claimant's shift. The next day the claimant reported a work-related injury and she examined him and observed swelling in the groin. She gave him a drug test and had him fill out an accident report form. Ms. Chapman returned the claimant to work while waiting for her supervisor, Robin Kerr, to call back. Ms. Chapman was instructed to send the claimant to Dr. Reddy for an evaluation. An appointment was scheduled for the next day, February 22, 2006. On the third day Ms. Chapman was informed that the claim was being denied.

MEDICAL EVIDENCE

On February 22, 2006, Dr. Reddy completed a WCC Form AR-3, "Physician's Report" showing a work-related injury on February 20, 2006 resulting in an inguinal hernia. Dr. Reddy assessed work restrictions of 15-20 pounds and recommended the claimant consult a surgeon.

Dr. Robertson performed surgery on March 31, 2006 and the claimant testified he had fully recovered. Dr. Robertson excused the claimant from work from February 24 to April 26, 2006.

DOCUMENTARY EVIDENCE

The claimant presented his medical bills which have been turned over to a collection agency despite the language of Ark. Code Ann. §11-9-118, which prohibits collection during pending litigation.

FINDINGS AND CONCLUSIONS

Act 796 of 1993 made no changes in Ark. Code Ann. §11-9-523, nor specifically repealed

prior case law concerning the interpretation of the hernia statute.

> (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 a 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.

The respondents have defended this claim contending that the claimant has not met the first and third elements of proof. With regard to the lay testimony, I note the claimant reported a work related injury to his girlfriend, the plant nurse and his physicians. Only his foreman was under the impression the injury was not work-related. Mr. Paden testified he did not remember exactly how the claimant had injured himself and Mr. Paden wasn't "100 percent sure on that." It seems unlikely that the claimant would have reported a work-related injury to the nurse that morning and while awaiting a doctor's appointment he would tell Mr. Paden an entirely different version. Therefore I find Mr. Paden's memory on this point is mistaken. Therefore I find the claimant has met the first element of proof that the hernia followed as a result of a strain at work.

The court has held that cessation from work is necessary to establish a causal connection between a work strain and a hernia. However, the cessation of work is not determined by any mathematical formulas or measured by hours or minutes. It is enough that the cessation from work came soon enough after the trauma to establish a causal relationship under the circumstances of the case. Osceola Foods, Inc. v. Andrew, 14 Ark. App. 95, 685 S.W.2d 813 (1985); Ayers v. Historic Preservation Assocs., 24 Ark. App. 40, 747 S.W.2d 587 (1988).

In the case at bar, the claimant testified he experienced groin pain around 3:15 or 3:20 p.m.; found someone to take his place on the line; and went to the nurse's station at about 3:50 p.m. Under the circumstances of this case, I find this time line establishes a causal connection between the work strain and the development of a hernia. Therefore I find the claimant has met the third element of

proof that he ceased work immediately after the injury.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on February 20, 2006 at which time the claimant was earning sufficient wages to entitle him to a compensation rate of $246.00/$185.00.

2. The claimant has proven by a preponderance of the credible evidence of record that he sustained a compensable hernia as defined by Ark. Code Ann. §11-9-523.

3. The respondents are directed to pay all reasonable and necessary medical expenses within thirty days pursuant to Rule 30.

4. The respondents are directed to pay temporary total disability from February 24, 2006 to April 26, 2006 as the claimant remained in his healing period totally unable to work.

5. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.

6. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

   Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21,1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

   As a reminder, Ark. Code Ann. §11-9-715 was amended by Act 1281 of 2001, limiting attorney's fees on medical benefits and services for injuries after July 1, 2001.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above along with their proportionate share of attorney's fees. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A.

§11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge