

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603078

PAUL WARE, EMPLOYEE	CLAIMANT
MURPHY MOTORS, EMPLOYER	RESPONDENT
FEDERATED MUTUAL INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED FEBRUARY 14, 2007

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on December 5, 2006, at El Dorado, Union County, Arkansas.

Claimant appeared PRO SE.

Respondents represented by HON. ERIC NEWKIRK, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on December 5, 2006, in El Dorado, Arkansas. A prehearing order was entered in this case on October 24, 2006. The prehearing order set out the parties stipulations, contentions and issues to be litigated at the full hearing. A copy of the prehearing order was marked Commission Exhibit No. "1" to the hearing record.

The following stipulations were submitted by the parties at the full hearing:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employer/employee/carrier relationship existed at all relevant times, including November of 2005.
- 3) The claimant's average weekly wage at the time of

the alleged injury was \$698.98, which would have entitled the claimant to a temporary total disability rate of \$466.00 per week.

By agreement of the parties, the issues to be litigated and resolved at the full hearing were limited to the following:

- 1) Whether the claimant sustained a compensable hernia injury in November of 2005.
- 2) If compensability is overcome, whether claimant is entitled to associated medical benefits and temporary total disability benefits from February 23, 2006 through March 27, 2006.
- 3) Notice defense.

At the full hearing, claimant contended that sometime in November of 2005 he sustained a compensable hernia injury while working for Murphy Motors. Claimant contended that as a result of his compensable hernia injury he is entitled to all related medical expenses and temporary total disability benefits from February 23, 2006 through March 27, 2006.

In summary, respondents contended claimant could not meet the requirements of A.C.A. §11-9-523 in establishing a compensable hernia injury. Respondents contended that in the event compensability is somehow established, that respondents have no liability until March 7, 2006, the date on which they first received notice of the alleged hernia injury from the claimant.

The record consists of the December 5, 2006 hearing transcript and the

exhibits contained therein.

DISCUSSION

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the existence and extent of the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. ***Ford v. Chemipulp Process, Inc.***, 63 Ark. App. 260, 977 S.W. 2d 5 (1998).

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.* Moreover, to prove the compensability of a hernia, a claimant must prove by a preponderance of the evidence:

- (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 claim, the claimant was very candid about the fact he could not remember the exact date of his alleged hernia injury. (T. pg. 31, lines 22-24) The claimant contended his hernia injury occurred sometime either one or two weeks before Thanksgiving Day of 2005. (T. pg. 8, lines 14-24) The claimant testified that in November of 2005 he was working on a Nissan truck, picked up some tires and then felt a burning sensation in his abdominal area. The claimant testified that after the burning sensation, he told his supervisor, Mr. Conway, about his pain; but that his supervisor said "just go over there and sit down and everything will be all right." (T. pg. 22, lines 10-16) After a short rest, the claimant testified his pain eased up and he was able to work. However, the claimant testified anytime he would pull something up, "the pain would come back." (T. pg. 23, lines 1-2)

To substantiate his claim, claimant asked respondents for all work order documents for the month of November 2005 that showed he worked on a Nissan Titan Truck. Claimant, in his Exhibit 1, showed that he worked on a Nissan Titan Truck on November 2, 2005 and November 11, 2005. Claimant testified that "it was probably the one on November 11" that caused his hernia. (T. pg. 28, lines 20-21) Again, claimant testified her told his supervisor, Mr. Conway, the same day of his alleged hernia injury that he had hurt himself. Mr. Conway testified that he never recalled the claimant telling

him that he was hurt. Mr. Conway testified that the first he ever heard of the claimant being injured in November of 2005 was sometime around March of 2006. (T. pg. 51, lines 12-17)

According to the claimant's testimony, his best guess as to the date of his alleged hernia injury was November 11, 2005. Clearly, the record shows that the claimant did not seek attendance of a licensed physician within seventy-two (72) hours after the alleged occurrence of his hernia. Further, the claimant testified that he continued to work after his alleged compensable hernia injury through the first of December 2005.

Q. But at any rate, it sound like from what you said that the pain wasn't so severe that you weren't able to work.

You continued to work, correct?

A. I did continue to work.

Q. I think you continued to work all the way through when you left in the first part of December, is that right?

A. Right.

Q. And I think that they didn't terminate you or anything, you left of your own volition. Is that right?

A. Yes, that's correct, and no offense to Denny but it wasn't because of any personal deal with Denny, but his business practices weren't what I saw to be the best.

Q. And candidly, you could make more money at the brake job was the issue. You could make a little better money at a different place that you had worked?

A. That's right. (T. pgs. 32 & 33, lines 21-25 & 1-14)

As stated herein, to prove a compensable hernia injury, the pain therefrom would have to cause the employee to cease work immediately. Here, the claimant's testimony is clear that he continued to work for several days after his alleged compensable hernia injury.

In conclusion, the claimant has failed to prove by a preponderance of the evidence that his alleged hernia injury caused pain so severe that he had to cease work immediately. In addition, the claimant failed to prove by a preponderance of the evidence 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 alleged occurrence. Therefore, the claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable hernia injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 hereby made in accordance with A.C.A. §11-9-704.

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- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
- 3) The clamant has failed to establish by a preponderance of the credible evidence that he sustained a compensable hernia injury.

ORDER

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

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