

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F209204

KEVIN PATTERSON,
EMPLOYEE

CLAIMANT

LOONEY'S TRUCK TIRE CENTER,
EMPLOYER

RESPONDENT

COMPANION PROPERTY & CASUALTY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 13, 2004

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant represented by HONORABLE ZAN DAVIS, Attorney at
Law, Little Rock, Arkansas.

Respondents represented by HONORABLE ANDY L. CALDWELL,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed June 9, 2003. The administrative law judge
found, "The claimant sustained a compensable injury
resulting in an inguinal hernia on August 1, 2002." After
reviewing the entire record *de novo*, the Full Commission
affirms the opinion of the administrative law judge.

I. HISTORY

The claimant, Kevin Patterson, testified that his work
history after high school consisted of "Either tire work or
driving a truck." Mr. Patterson testified that this work

entailed lifting tires weighing from around 125 pounds to 10-15 pounds. The parties stipulated that the employment relationship existed on August 1, 2002. The claimant testified:

Q. Tell me what happened on August 1, 2002.

A. We was - we got - our runs - we've got different runs different days. We've got a south run, and then we've got one we run to Memphis, and so on, and my last run, I was running the south on my last load. I was in Warren. They had more tires than what normally they order, so we had them stacked on a truck. And as I was pulling them down my side started hurting. Well, I reached up there and I pulled one down and it felt like I had been kicked by a horse....

Q. Tell me what that felt like when you felt the pull?

A. It felt like being kicked by a horse....

Q. How would you describe the pain that you felt?

A. Severe.

Q. Okay. Did it stay the same? Did the pain stay the same?

A. No.

Q. What happened?

A. I went over there and sat down for about fifteen to twenty minutes. If I sat down it didn't hurt quite as bad, so I went ahead and unloaded the truck and came on in.

The record contains an Employee's Notice Of Injury, signed by the claimant on August 2, 2002. The claimant

wrote that he had injured his left side on August 1, 2002, while "pulling tires off the top of trailer." The record indicates that the employer authorized the claimant to be treated at St. Vincent Family Clinic on August 2, 2002. The claimant wrote that while "pulling tires from the top of the stack", his "side started hurting from midways down into leg." According to the physician's notes, it appears that the claimant was diagnosed with "left inguinal strain" and possibly "hernia." The claimant was assigned lifting and reaching restrictions.

The claimant was referred to Dr. Rex E. Luttrell, who reported on August 8, 2002:

This is a 35 year old male who works for a tire company. Recently he lifted a large tire off a truck and felt a pain in his left groin. Since then he has had continued difficulty and was told to stay off work until this was evaluated....

Left groin demonstrates a definite left inguinal hernia. I talked to him in detail with he and his wife about repair along with all potential complications. He is understanding and is agreeable to proceed. We will get him scheduled for surgery in the next couple of weeks.

The claimant testified that the insurance company would not pay for surgery.

Dr. Luttrell wrote to Tearsa White, a claims representative for the respondents, on August 19, 2002:

Recently I was asked to see Kevin at St. Vincent Family Clinic who is a patient of Dr. Susan Ebel's for a symptomatic left inguinal hernia. As he stated to me this occurred at work when he lifted a large tire off a truck. Since then, he has continued to have significant left groin pain and because of this, he is unable to work. Without a doubt, on exam, he was found to have an acute left inguinal hernia. I talked to him about repair and this will need to be done before he is able to go back to any significant amount of work.

The claimant testified on direct:

Q. How long did you stay off work?

A. I was off about two weeks.

Q. Okay. And then what did you do?

A. I called and asked Ms. White about Workman's Comp, and she said - that's when she told me that they refused it, so I called and talked to - I think her name is Emily Paul, here at Workers' Comp, and asked her if I could get a job, and she said as long as I wasn't picking up and doing no heavy work, that yes, I could go back to work....

Q. And what did you go back to work doing?

A. Driving a truck.

Mr. Patterson claimed entitlement to worker's compensation. The claimant contended that he sustained a hernia on August 1, 2002, while lifting tires. The claimant contended that he was entitled to reasonably necessary medical treatment, two weeks of temporary total disability compensation, and an attorney's fee. The respondents

contended that the claimant could not prove all of the elements of Ark. Code Ann. §11-9-523(a).

The parties deposed Tearsa White on March 19, 2003. Ms. White testified that she received notice of the claim on August 2, 2002. Ms. White testified, "Initially before I spoke with anybody regarding the claim, just from the information given on the First Report of Injury, he had reached up to take a tire off the top of a stack of tires, felt pain in his left side." The respondents' attorney questioned Ms. White:

Q. Will you tell me what was said to you on the telephone?

A. He told me he was a driver for the company; that he had been loading and unloading tires all day. He knew when he had pulled something. He didn't know exactly when it was, but he knew that something wasn't right, but he did tell me that it didn't start to bother him until approximately 2 hours later. He told me that he was at his last stop, which was around 4:30 in the afternoon that day. It didn't bother him, everything was great while he finished up his job. He went on home - like I said, he was in a different town and where he lived was about 2 hours away, and he didn't really notice any problem as far as pain or discomfort until he got home....

Q. Did he at anytime indicate to you that he had ceased work that day after his injury?

A. No. He told me that he finished up the job and then drove the 2 hours home....

Q. Did he indicate to you at anytime that after he lifted that he had severe pain in the hernia region that day until he got home?

A. No. He told me that he did not notice anything until after he had got home. So he had finished up the job.

The claimant's attorney cross-examined Ms. White:

Q. Now what I am trying to find out, is it your dispute about the severity of the pain after the lifting?

A. According to the statute, which I am sure you are aware of, it has to have severe pain. He did not describe severe pain at all, nor did he stop working.

Q. It was your understanding that some pain was involved, it just wasn't severe?

A. It wasn't severe enough for him to stop working.

After a hearing before the Commission, the administrative law judge found, "The claimant sustained a compensable injury resulting in an inguinal hernia on August 1, 2002." The administrative law judge found that the claimant was entitled to reasonably necessary medical treatment. The administrative law judge also found, "The claimant is entitled to two weeks of temporary total disability benefits. (The parties will agree on the correct temporary total disability rate to apply.)" The respondents appeal to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. § 11-9-523(a) provides that 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 matter, the Full Commission affirms the administrative law judge's finding that the claimant proved he sustained a compensable hernia. The claimant was pulling down large tires in the course and scope of his employment on August 1, 2002. The claimant testified, "I pulled one down and it felt like I had been kicked by a horse." The claimant's credible testimony, which is corroborated by the record, satisfies requirements (1) and (2) of § 11-9-523. The preponderance of evidence indicates (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, and that (2) there was severe pain in the hernial region. The claimant testified that he stopped working for 15-20 minutes, which satisfies requirement (3) that the employee cease work immediately. The claimant clearly (4) reported the injury within 48 hours. Not only did the claimant require the services of a physician within 72 hours, satisfying requirement (5), the claimant was also clearly treated during that time frame.

The respondents argue that the claimant's pain was not "severe" pursuant to § 11-9-523(2). Nevertheless, the claimant explicitly testified that his pain was "severe," like he had been "kicked by a horse." The respondents rely on Ms. White, the claims examiner, who essentially testified that the claimant told her his pain was not "severe." Whether or not the claimant used the term "severe" with Ms. White is really not dispositive. Even a "slight burning" or "sticking or pinching feeling" is enough to satisfy this element of the statute. Darling Store Fixtures v. McDonald, 54 Ark. App. 60, 922 S.W.2d 748 (1996).

We also recognize the respondents' assertion that the claimant did not cease work immediately after the hernia

injury. The respondents rely on the testimony of Tearsa White, who stated, "It wasn't severe enough for him to stop working." However, the claimant credibly testified that he did stop working for a time immediately thereafter. We cannot arbitrarily disregard the claimant's testimony. Crow v. Weyerhaeuser Co., 46 Ark. App. 295, 880 S.W.2d 320 (1994). The preponderance of evidence in this case shows that the claimant satisfied each element of Ark. Code Ann. §11-9-523(a).

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved that he sustained a compensable hernia pursuant to Ark. Code Ann. §11-9-523(a). We find that the claimant proved he remained within his healing period and was totally incapacitated for two weeks following the compensable injury. We also find that the claimant proved that all of the medical treatment of record was reasonably necessary in connection with the compensable injury. The Full Commission therefore affirms the opinion of the administrative law judge. The claimant's attorney is entitled to a fee on the controverted indemnity benefits, pursuant to Ark. Code Ann. § 11-9-715(a) (2) (B) (ii) (Repl. 2002). For prevailing on appeal, the claimant's attorney is entitled to an additional fee of

Patterson - F209204

10

\$500, pursuant to Ark. Code Ann. § 11-9-715(b)(2) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.