

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F412724

CARL HOLT, EMPLOYEE	CLAIMANT
TERRACON CONSULTANTS, INC., EMPLOYER	RESPONDENT
LIBERTY MUTUAL FIRE INS. CO., CARRIER	RESPONDENT

OPINION FILED JANUARY 10, 2006

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

Claimant represented by HONORABLE CONRAD ODOM, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE JAMES ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal from a decision of the Administrative Law Judge finding that the claimant sustained a compensable hernia on November 15, 2004, for which he is entitled to benefits. Based upon our de novo review of the entire record, we find that the claimant has failed prove by a preponderance of the credible evidence that he sustained a compensable hernia on November 15, 2004; therefore we find that the decision of the Administrative Law Judge must be reversed.

The claimant is employed by respondent employer as a laboratory technician. The evidence reveals that on November 4, 2004, the claimant sustained a stomach strain at work when lifting and carrying five gallon buckets of gravel. The claimant described the incident as a pulled muscle in his stomach that did not cause him to stop working and did not result in the need for medical treatment. Nevertheless, the claimant reported the incident in compliance with company policy. A copy of the claimant's November 4, 2004, Injury/Illness Incident Report was introduced into evidence. Charles David Cooley corroborated the claimant's testimony regarding the reporting of this injury. The claimant further testified that on November 15, 2004, while lifting an oil pan for samples, he "got a stand-up noticeable hurt" that caused him to stop working. The claimant testified that he reported this incident to Debra in the office and she helped him fill out paperwork at that time. The claimant testified that he immediately went to see a physician that day. The Worker's (sic) Compensation Claimant's Statement of Accident completed by the claimant

at the Cooper Clinic on November 15, 2004, lists the date of accident as "9th? filled at office" and describes the accident as having occurred when the claimant "lifted bucket of gravel felt pull at navel." The claimant was diagnosed with an umbilical hernia and is in need of surgery.

In order to establish a compensable hernia, the claimant must prove:

- (1) That the occurrence of the hernia immediately followed as the result of sudden effort, severe strain, or 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;
- (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.

A.C.A. § 11-9-523(a).

The claimant does not contend that he sustained a compensable hernia on November 4, 2004; rather, the claimant contends that the incident on November 15, 2004, when he was lifting an oil pan sample resulted in a compensable hernia. We cannot find that the claimant has proven the elements necessary to establish a compensable hernia by a preponderance of the evidence. First, although the claimant testified that he sustained a hernia on November 15, 2004, when lifting an oil pan, he did not present any evidence to corroborate this fact. Mr. Cooley testified on claimant's behalf and confirmed that the claimant promptly reported the November 4, 2004, incident that did not result in a hernia. The claimant did not call anyone to corroborate the alleged injury and reporting of the so-called November 15, 2004, incident. Moreover, when the claimant first presented for medical treatment, he did not mention any precipitating event on November 15, 2004, as causing his need for medical treatment; nor did he describe an oil pan lifting event as causing his pain. Instead, the claimant wrote on the medical form that the incident occurred on "Nov. 9th?" and he only

described the previous lifting of the five gallon buckets of gravel as causing his pain. Either the November 4th five gallon bucket incident caused the claimant's pain or it did not. The claimant cannot have it both ways. For the purposes of this claim, the claimant contends that it did not. However, for the purposes of obtaining medical treatment, the claimant consistently advised his medical care providers that he injured himself prior to November 15th, while lifting five gallon buckets of gravel.

The evidence of record unequivocally demonstrates that while the claimant may have sustained an injury on November 4, 2004, to his stomach or abdomen, this injury did not result in the need for medical treatment within 72 hours after the occurrence. The claimant was adamant that the November 4, 2004, occurrence did not result in severe pain and require any medical treatment whatsoever. According to the claimant, he did not develop severe pain or require medical treatment until November 15th. However, the evidence fails to show that the claimant was involved in any work-related "occurrence" on the 15th that was the result of

sudden effort, severe strain, or an application of force directly to the abdominal wall. Moreover, despite the claimant's testimony that he reported a new work-related occurrence on November 15th, there is no evidence corroborating this fact. At best, the claimant only requested medical treatment on November 15th, as evidenced by the respondents sending the claimant to the Cooper Clinic on that date. No one offered any testimony to confirm that the claimant provided notice of a new occurrence on November 15th. We do not find the claimant's self-serving testimony of a new occurrence to be credible as it is in direct conflict with the claimant's history of injury as provided to the Cooper Clinic on November 15th. As such, we cannot find that the claimant has established by a preponderance of the credible evidence all the elements necessary to establish a compensable hernia occurring on November 15, 2004. Therefore, we find that the decision of the Administrative Law Judge must be reversed and this claim for benefits denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the opinion of the Majority finding that the claimant failed to prove by a preponderance of the credible evidence that he sustained a compensable hernia on November 15, 2004. After a de novo review of the record, it is my opinion that the Administrative Law Judge's decision should be affirmed and adopted.

The claimant testified that in November 2004 he was carrying a five-gallon bucket to dump the waist out of it and he pulled a muscle in his abdomen. The claimant explained that this was on his right side about mid way. The claimant testified that it did not cause him to stop work

but he did fill out a incident report. The claimant testified that he had a little bit of difficulty with his side following this incident but it was not anything that stopped him from working or that he needed to seek medical treatment for.

The claimant testified that on November 15, 2004, at about 11:45 a.m., he was lifting an oil pan of samples and he got a "stand up noticeable hurt." The claimant testified that this pain caused him to stop work immediately and that he went immediately to report the event. The claimant testified that he went to the office and reported this event to Debbie who filled out paperwork, from there he went to Cooper Clinic and was seen by Dr. Karl Haws. The claimant explained that the pain he felt earlier in the month was in a different area than the pain he experienced on November 15. The claimant described this pain as being a cramp piercing pain in his navel. The claimant indicated that the intensity level of the November 15 pain was much more severe than the November 4 pain.

The claimant testified that he continues to have problems and that he is working with weight restrictions to lift no more than twenty - five pounds. The claimant testified that it was his understanding that he has an umbilical hernia for which surgery has been recommended. The claimant also testified that he had no explanation as to why he put down that his injury happened on November 9 while lifting buckets of gravel.

The claimant testified that he has not missed any work as a result of his hernia and that the respondent has helped him work around his restrictions.

Charles David Cooley testified that he was the construction materials manager for the respondent and he works with the claimant. Mr. Cooley testified that the claimant is honest, trustworthy, and a good employee. He also testified that he would have no reason to doubt the claimant's word.

The medical records set forth that the claimant was seen at Cooper Clinic by Dr. Karl Haws for complaints of an accident which occurred approximately November 9, 2004.

The history sets forth that the claimant reports that since this date in question he has had pain in his navel area which occurred initially after lifting a bucket of gravel. After examination, the claimant was diagnosed with an umbilical hernia and a surgical evaluation was scheduled. The claimant was returned to work with a restriction of no lifting greater than twenty to twenty-five pounds. The claimant was seen at the Northwest Arkansas Surgical Clinic on November 18 at which time he filled out a history of his illness where it is indicated that he was lifting a bucket of gravel and felt something in his navel that was not normal. Dr. James Bledsoe writes on November 18, 2004, that the claimant's work involves standing and lifting, he noted some discomfort in his umbilical area and some swelling. After examination, the doctor diagnosed the claimant with having an umbilical hernia and recommended a hernia repair.

The non medical evidence sets forth that on November 4, 2004, the claimant filled out an accident report for the respondent setting forth that at 11:45 he was lifting five gallon buckets of gravel and felt something

pull below his navel. On November 15, 2004, the claimant filled out a form for the Cooper Family Medical Clinic that the date of accident was the 9th with a question mark and then filed at the office. When asked as to a description of the accident the claimant has written in lifted bucket of gravel felt pain in navel.

The sole issue in this appeal is whether the claimant's hernia injury is compensable under the Ark. Code Ann. §11-9-523. In order to be compensated, the claimant must show:

- (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.

Ark. Code. Ann. §11-9-523(a)(1-5).

In my opinion, the claimant's hernia injury of November 15, 2004 is a compensable injury because it conforms to every requirement of the Arkansas statute. First, the claimant's hernia occurred as a result of sudden effort; the act of picking up an oil sample pan. Second, the claimant experienced severe pain in the hernial region. Dr. Haws documented the claimant's pain in his naval area when he diagnosed him with an umbilical hernia and recommended surgery on November 15, 2004. Furthermore, the claimant testified it was "cramp-pierced pain in [his] naval area." While the claimant used language that suggested his

pain was severe, the Arkansas statute does not require he use the word "severe" in order to comply with the severe pain requirement. Rather, we have stated, "we do not put semantics before substance" when addressing severity of pain. Darling Store Fixtures v. McDonald, 54 Ark. App. 60; 922 S.W.2d 747 (1996) (citing Ayers v. Historic Preservation Assoc., 24 Ark. App. 40; 747 S.W.2d 587 (1988)). In Darling, claimant was awarded compensation for a hernia injury despite not using the word "severe" to describe his pain. Instead, we found it sufficient that claimant "'felt as if he stretched' something, pulled something, felt a 'slight burning sensation' and a sticking or pinching feeling in certain positions." Darling, 54 Ark. App. At 64. The claimant in the present claim described his pain as severe enough to stop him in his tracks.

The claimant's pain caused him to cease work immediately, which is the third requirement for a hernia to be compensable. As stated in Osceola Foods, Inc. v. Andrew, 14 Ark. App. 95; 685 S.W.2d 813 (1985), "required causal connection should be based on evidence that cessation from

work became necessary soon enough after trauma to establish causal connection under the circumstances of the case." According to his testimony, the claimant ceased working immediately after he lifted the oil sample pan and felt pain, around 11:45 a.m.; despite that his shift was not over until after 6:00 p.m. that evening. In addition, the claimant immediately filed notice of the incident to his supervisor, in accordance with the fourth requirement under the statute. Lastly, he sought medical attention from Dr. Haws the same day, in compliance with the fifth requirement of the statute.

For the foregoing reasons, I must respectfully dissent from the Majority opinion. In my opinion, the claimant has met all five criteria for establishing a compensable hernia and the Administrative Law Judge's decision should be affirmed and adopted.

SHELBY W. TURNER, Commissioner