

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F412823

WILLARD WORKMAN,
EMPLOYEE

CLAIMANT

HARRIS FORD,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED APRIL 6, 2006

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

Claimant represented by the HONORABLE JAMES A. McLARTY, III,
Attorney at Law, Newport, Arkansas.

Respondents represented by the HONORABLE MELISSA ROSS
CRINER, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed August 26, 2005. The administrative law judge found that the claimant sustained an injury "arising out of and in the course of his employment" on October 15, 2004. The administrative law judge found that the claimant "has suffered the total loss of his right testicle as a result of the October 15, 2004, compensable injury." After reviewing the entire record *de novo*, the Full Commission reverses the

opinion of the administrative law judge. The Full Commission finds that the claimant did not prove he sustained a compensable injury pursuant to Ark. Code Ann. §11-9-102(4) (A) (i).

I. HISTORY

The parties stipulated that the employment relationship existed on October 15, 2004. The claimant testified on direct examination:

Q. Did you hurt yourself at work on October the 15th of 2004?

A. Yes....

Q. What were you doing?

A. Taking brake calipers off of a big truck....

Q. And there are two big bolts, right?

A. Yes.

Q. And what are you going to do to get these two big bolts off?

A. You have to use a big socket with a brake overbar....

Q. The truck is suspended?

A. Yeah....

Q. Do you do this, sir, while you're sitting down or standing up?

A. Oh, you got to do it standing up....

Q. But now we've got the truck in the air and you're facing the wheel that's got the two big nuts, right?

A. Yes.

Q. And you're going to use that device in your hands to manually break the torque or tension on those nuts and crank them off?

A. Yes....

Q. Were you able - working alone with the two items in front of you, the socket and the breaker bar, were you able to break the torque on the first nut that you attached?

A. No, sir....

Q. Was the use of the cheater bar on the breaker bar combined sufficient for you to accomplish the task by yourself?

A. No, I had to get help. I got the first one out. I had to go get some help....

Q. After you got your first nut out, how did you then attack getting the second nut out?

A. I went and got Ricky....

Q. How long, Mr. Workman, do you think that you and/or you and Mr. Hardin spent in getting the four nuts off the brake caliper of the truck on Friday, October the 15th?

A. Probably about - I'd say 3:00 to 5:00, quitting time just about....

Q. Were you aware, sir, when you clocked out on the 15th, which I believe the calendar will show was a Friday, that you had injured your body as a result of the effort that you'd been putting forth on that last job?

A. No, sir.

The claimant testified on cross-examination:

Q. Are you saying it happened when you were pushing the bar up or pulling it down?

A. Yes.

Q. Which movements?

A. Both ways.

Q. Both movements?

A. Yes.

Q. I believe you testified that you didn't know you hurt yourself right away, is that correct?

A. I didn't no.

The claimant testified that he began feeling sick at home the next day, October 16. The claimant testified that he noticed on October 17 that his testicle was swollen.

The claimant signed a Form AR-N, Employee's Notice Of Injury, on October 19, 2004. The claimant wrote on the Form AR-N that he had injured his stomach, back, and testicles on October 15, 2004. The claimant described on the Form the

cause of injury: "was using a wrench to get bolts out of a vehicle."

The claimant treated at Family Practice Clinic on October 19, 2004; the notes from that date indicated that the claimant complained of fever and a swollen right testicle. The handwritten notes appear to indicate that the claimant "strains a lot working on a big truck."

An ultrasound of the claimant's right testicle on October 19, 2004 revealed the following impression: "Changes probably of epididymitis with hydrocele. No testicular mass is seen."

Dr. Phillip A. Snodgrass, a general surgeon, examined the claimant on October 19, 2004 and diagnosed "Epidymitis, R, orchitis."

The impression from a Radiology Report on November 10, 2004 was, "Normal CT scan of the abdomen and pelvis. Small inguinal hernias seen bilaterally containing omental fat."

Dr. Snodgrass reported on November 10, 2004:

A 50 year old male who was initially seen in the ER on 10-19-04 at which time he had epididymo-orchitis. An ultrasound was performed which showed that he had no tumor and had no embarrassment of his blood supply. He was

treated over the next couple of weeks with appropriate medication and he had excellent healing at the time and was scheduled to have a testicular ultrasound again on 11-15. However, last Sunday he began to have progressive pain and localization and swelling of his right testicle and was seen in Walnut Ridge and was admitted to the hospital overnight there and then the patient decided he wanted to come back to Newport and came to the hospital for admission of observation followed by appropriate studies....

His right testicle is enlarged approximately 3-4 times its normal size. It is moderately indurated and exquisitely tender. Previous examination revealed no hernia. However, he did have a hydrocele.

Dr. Snodgrass' impression was, "EPIDIDYMO-ORCHITIS, UNRESOLVED VS. TORSION OF THE RIGHT TESTICLE."

Dr. Snodgrass performed an "Orchiectomy right, removal of splenic cord on 11-11-04." The discharge diagnosis on November 13, 2004 was "TORSION, RIGHT TESTICLE ISCHEMIC GANGRENE, RIGHT TESTICLE SEVERE ORCHITIS WITH INFARCTION."

The record contains an undated letter from Dr. Snodgrass, in which he replied to correspondence from Systematic Review dated November 24, 2004:

1. It my (sic) opinion that the first time (10/19/2004) I saw Mr. Workman, I thought he had a traumatic epididymorchitis. He was evaluated with

an ultrasound and had adequate blood supply to his testicle and was treated with appropriate medications.

2. Mr. Workman's white blood count performed at Dr. Jackson's office showed an elevated count which was consistent with an inflammatory response to his swollen testicle and epididymitis. He did not have penile discharge or urinary track systems to suppose that his illness was due to an infection. However, because of his symptom of fever, he was given antibiotics.

3. I can state that he most likely had an injury to his testicle, which embarrassed his blood supply to the testicle resulting in the effect of torsion. The initial effect which was evaluated (10/19/2004) by US revealed a viable testicle, however when he returned on 11/11/2004, he had infarcted the blood supply which led to his orchiectomy.

4. The orchiectomy performed on 11/11/2004 was the procedure of choice. Other than routine post operative care is not required....

On December 4, 2004, Dr. Snodgrass indicated that the claimant could return to work without restrictions on December 7, 2004.

Dr. Snodgrass informed the claimant's attorney on January 24, 2005, "It is my opinion that the initial evaluation by myself concerning Mr. Workman was most likely due to a traumatic injury to his testicle. It is quite possible that he had a hydrocele which when he was stressed physically may have torn and/or torqued his right testicle.

The initial evaluation appeared to be epididymo-orchitis; however, in retrospect it is most likely due to the mechanism I just described."

A urologist, Dr. D. Keith Mooney, wrote to Ann Wilson of Systematic Review on May 9, 2005:

I have had an opportunity to review the records concerning Willard Workman, Claim Number 64461, Date of Birth 2/25/54, and date of injury reported October 15, 2004. After review, Mr. Workman reported straining to loosen bolts at work on 10/15/04. He did fairly well initially, but had gradually worsening groin symptoms over the weekend, but went to work on 10/18/04. Apparently he continued to be symptomatic and was seen by his family physician on 10/19/04, thought to have a possible inguinal hernia and was subsequently referred to Dr. Phillip Snodgrass, a general surgeon at Newport Hospital.

Dr. Snodgrass examined him and thought that he had epididymitis at that time. His lab and x-ray studies would seem to support this diagnosis. His urinalysis did show WBC's, and the initial scrotal ultrasound seemed to show good blood flow and an enlarged epididymis, both supported the diagnosis of epididymitis.

Mr. Workman was given antibiotics and was seen by Dr. Snodgrass on 10/21/04 and seemed to be less tender and improved. The recorded Workman's Comp interview from 10/21/04 would seem to indicate that he was doing reasonably well at that time.

Mr. Workman was seen on 10/28/04 and according to the clinic notes continued to have improvement,

was less tender, and seemed to have an improving physical examination. He was released to return to work. Subsequently, however, the patient was readmitted to the Newport Hospital on 11/10/04 after having had progression of pain and swelling. A second scrotal ultrasound indicated diminished blood flow to the right testicle....

Mr. Workman subsequently underwent what appeared to be a right radical orchiectomy on 11/11/04. I did not see a comment concerning the appearance of the testicle or any obvious twist in the spermatic cord. The path report from Newport as well as a second opinion from Searcy did show extensive necrosis and acute inflammatory changes compatible with torsion....

In the records that I have reviewed, it was not clear to me that the patient had any underlying or preexisting condition that would result in either orchitis or torsion of the testis. If a patient had a history of prostatitis or urinary tract infections, he would be at risk for developing orchitis. His urinalysis in the Emergency Room from 10/19/04 does seem to suggest inflammatory changes of his urinary tract. While not impossible, he would be less likely to have a testicular torsion at age 51 as generally this is considered to be related to a congenital abnormality of the testis within the scrotum, and generally presents itself in much earlier years. In my opinion, based on the information at hand, the patient probably had epididymitis that ultimately went on to develop an infarction of the testis because of progressive epididymitis and orchitis.

Therefore, with the information presented, I cannot "with a reasonable degree of certainty" link the reported work incident and the subsequent scrotal changes which resulted in surgery. While

there is some chance of his having underlying prostatitis with a delayed development of epididymitis after straining at work, a previous history of dysuria, other lower urinary tract irritative symptoms or urinary tract infections would have to be elicited prior to his injury, and I do not see these documented in the records.

A pre-hearing order was filed on June 28, 2005. The claimant contended that he "suffered an injury within the course and scope of his employment on 10/15/04 for which he should receive benefits under the Workers' Compensation Act, i.e., reasonable and necessary medical expense as well as temporary total disability benefits for time away from work."

The respondents contended that the claimant "did not sustain a compensable injury while working for respondent employer on or about 10/15/04. Respondents further contend that claimant did not sustain an injury while working in the course and scope of his employment and that his problems pre-existed his employment with respondent employer."

The administrative law judge determined that a hearing would be conducted "on the issues of compensability (medical and temporary total disability benefits), and controverted attorney fees[.]"

The parties deposed Dr. Snodgrass on July 13, 2005.

The respondents attorney questioned Dr. Snodgrass:

Q. Just for my purposes, could you explain to me the difference between - I don't even know if I can say it - epididymo-orchitis - is that right?

A. Epididymo-orchitis?

Q. Yes - and torsion?

A. Okay....Epididymo-orchitis is just nothing more than the descriptive term for the inflammatory process of the epididymis, as well as the testicle, and it can be produced by multiple different reasons. Torsion is when that structure, which includes the vascular support to the testicle, is twisted, or traumatized, in which there is blood vessel damage and obstruction to the blood flow of the testicle....What probably happened in this situation is that there was trauma to the epididymis and to a hydrocele which was present, which produced swelling, which, in reality, then, obstructed the blood supply. Whether this was a true torsion or not, I don't think there was any definition of that in the pathology report, but there had to be some sort of embarrassment of the blood supply for him to have complete obstruction and the, or course, death of his testicle. Now whether this was an on-going twisting-untwisting process or not, I don't think anybody call tell you that....

Q. Is it a possibility that the swelling that embarrassed the blood flow could be attributable to some bacterial infection or other inflammatory process?

A. Well, he didn't have any signs of infection. He had no urinary tract complaints and he had not had any infections that we know of, and I believe his white count and his laboratory studies were normal. So, the possibility of being an infection, I think, is somewhat remote....

Q. Just briefly, could you describe to me your understanding of what exactly happened to Mr. Workman on October the 15th?

A. Well, vaguely, I understand he was moving some large object or pulling on some sort of an object and he complained of pain and apparently he didn't have an initial symptom, but it was a delayed problem of approximately two or three days - that's basically what I remember about what he told me.

Q. Through the course of your testimony today, you've mentioned trauma several times, and possibly damage of tissue. My main question is, what are you attributing - or what are you calling trauma, as far as Mr. Workman's injury?

A. Well, he didn't have any direct trauma. In other words, he didn't have something hit him, but in my estimation, the only what I can explain what I see, is he must have had some stretch of tissues or injury to tissues that would have produced this pattern. He did not tell me that he got hit by anything or was - but he did feel discomfort in his groin after he did this pulling - I guess it was a pulling - whatever he was doing....

Q. Is it a possibility that Mr. Workman had epididymitis - like you originally thought - and then, subsequent to that, some sort of torsion took place, independently of this incident?

A. It's possible, yes. Whether it's probable or not's a different thing, I think....

Q. But, at no time during your treatment or diagnosis of Mr. Workman were you under the impression that he had been struck or received direct trauma to his testicles?

A. I never received that information.

The administrative law judge found, among other things, that "On October 15, 2004, the claimant sustained an injury arising out of and in the course of his employment." The administrative law judge found that the claimant "suffered the loss of his right testicle as a result of the October 15, 2004, compensable injury." The administrative law judge awarded a period of temporary total disability and medical treatment. The respondents appeal to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-102(4)(A)(i) defines "compensable injury":

An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i). The claimant's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(4)(E)(i).

In the present matter, the administrative law judge essentially found that the claimant suffered the loss of his right testicle as the result of a compensable injury occurring on October 15, 2004. The Full Commission reverses this finding. We find that the claimant did not prove he sustained a "compensable injury" pursuant to Ark. Code Ann. §11-9-102(4)(A)(i). The claimant did not prove by a preponderance of the evidence that there was a specific incident identifiable by time and place of occurrence on October 15, 2004. We are aware of the claimant's testimony with regard to his "straining" at work on October 15, 2004. Nevertheless, the claimant testified that he at first did not know he had been injured, and there is no indication

that there was ever a specific incident identifiable by time and place of occurrence.

On the Form AR-N signed by the claimant on October 19, 2004, the claimant said he was "using a wrench to get bolts out of a vehicle." The first medical record, dated October 19, 2004, indicated that the claimant "strains a lot working on a big truck." Neither of these documents of record describe a specific incident identifiable by time and place of occurrence.

The Arkansas General Assembly has directed the Commission to strictly construe our workers' compensation law. See, Ark. Code Ann. §11-9-704(c)(3). In order to prove compensability pursuant to Ark. Code Ann. §11-9-102(4)(A)(i), there must be a particular, specific incident. *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001); *Hapney v. Rheem Manufacturing Company*, 342 Ark. 11, 26 S.W.3d 777 (2001). Hurting at the end of a long work day does not constitute a specific incident. *Howard v. Wal-Mart*, Workers' Compensation Commission E814194 (Nov. 3, 1999). Nor does a generic description of work-related duties suffice to demonstrate a specific incident. *White v.*

Lawrence Memorial Hospital, Workers' Compensation Commission E714906 (June 17, 1999); Ward v. PSC, Inc., Workers' Compensation Commission E500617 (Oct. 31, 1996).

Based on the record before us in the instant matter, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that there was a specific incident identifiable by time and place of occurrence on October 15, 2004.

Nor did the claimant prove that there was an accidental injury causing internal or external physical harm to his body on October 15, 2004. Dr. Snodgrass first reported swelling in the claimant's right testicle on November 10, 2004. However, we are unable to determine that this swelling was the result of physical harm occurring on October 15, 2004. The Full Commission is aware of Dr. Snodgrass' November 2004 opinion, to wit: "I can state that he most likely had an injury to his testicle, which embarrassed his blood supply to the testicle resulting in the effect of torsion." The Full Commission is unable to find that the "torsion" described by Dr. Snodgrass was in any way caused by an accidental injury occurring October 15,

2004. We find that Dr. Snodgrass' opinion in this regard is based on conjecture and speculation. Conjecture and speculation, however plausible, cannot be permitted to supply the place of proof. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 575 S.W.2d 155 (1979).

The Full Commission in the present matter places greater weight on the expert opinion of Dr. Mooney. Dr. Mooney, a urologist, stated, "the patient probably had epididymitis that ultimately went on to develop an infarction of the testis because of progressive epididymitis and orchitis....I cannot 'with a reasonable degree of certainty' link the reported work incident and the subsequent scrotal changes which resulted in surgery." It is within the Commission's province to weigh all the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). The Full Commission finds in the present matter that Dr. Mooney's opinion is entitled to significant weight.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove he sustained a "compensable injury" on October 15, 2004

pursuant to Ark. Code Ann. §11-9-102(4)(A)(i). The claimant did not prove by a preponderance of the evidence that there was a specific incident identifiable by time and place of occurrence on October 15, 2004. Nor did the claimant prove that he suffered physical harm to his right testicle as a result of an accidental injury occurring on October 15, 2004. The Full Commission therefore reverses the opinion of the administrative law judge, and this claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____The Majority finds that the claimant did not sustain a compensable injury identifiable by a specific incident. They further find that the claimant did not show

a work-related injury causing harm to his body. In my opinion, the claimant's testimony regarding the onset of his injury was sufficient to show he sustained an injury identifiable by a specific incident. I further find that the medical records and the opinion of Dr. Snodgrass support a finding that the claimant suffered from an accidental, work-related injury, that resulted in a compensable injury. Accordingly, I must respectfully dissent.

_____In asserting that the claimant did not show a compensable injury identifiable by a specific incident, the Majority notes that the claimant did not initially realize he had been injured. While I recognize this testimony, I find that the claimant credibly testified that he exerted great physical strength on the day preceding his injury. The claimant credibly testified that he spent hours attempting to remove bolts from a truck. The claimant said he exerted such force that he was physically tired and had to rest before returning to try again. He was ultimately unable to complete this task alone and had to enlist the assistance of a coworker. The claimant testified that he "pried on that till my stomach was hurting" and said that was when he enlisted help. The claimant completed the workday believing he had not sustained an injury. However,

the day after this incident, the claimant felt sick and his testicles began swelling.

The claimant's testimony regarding his exertions were corroborated by his coworker Ricky Hardin. Hardin said he helped the claimant after he was unable to remove the nuts. He further indicated it was a physically demanding task and said that he believed the work could cause someone to strain themselves. He also said he did not feel it would be unusual for the claimant to strain himself and then not realize it until a later time.

_____In my opinion, based on the foregoing testimony, the claimant has shown that he sustained a compensable injury while removing bolts from a truck. While he was not able to testify as to a precise time that he injured himself, I note that he consistently related the incident back to the strain he endured from working on the truck. Accordingly, I find that he has shown he sustained an injury due to a specific, work-related incident.

Next, the Majority argues that the claimant has not shown that his injury was causally related to a work-related injury. In supporting this finding, the Majority relies on the opinion of Dr. Mooney over that of Dr.

Snodgrass. I prefer the opinion of Dr. Snodgrass should have been preferred over that of Dr. Mooney.

While I note that the Commission has the authority to prefer one physician's testimony over another, I find that they have no valid reason to do so in the present case. Dr. Snodgrass was the claimant's treating physician throughout the course of his treatment. Furthermore, it appears that Dr. Mooney never actually examined the claimant. Rather, it appears he reviewed the claimant's medical records. However, from viewing Dr. Mooney's letter, it appears he did not even have full access to the claimant's treatment records. Furthermore, it appears that Dr. Mooney's opinion seems to be contrary to every other doctor that treated the claimant.

Dr. Mooney indicated that he believed the claimant had "epididymitis that ultimately went on to develop an infarction of the testis because of progressive epididymitis and orchitis." Whereas, Dr. Snodgrass repeatedly opined he believed that the claimant suffered a trauma to his testicle, which resulted in torsion and a need for surgery. Even after being presented with a multitude of other possible scenarios regarding the reason for the claimant's injury, Dr. Snodgrass continued to indicate that it was

likely the claimant's injury was a torsion that was directly related to his injury at work. In my opinion, this makes his testimony even more compelling.

Dr. Snodgrass testified that while the claimant initially presented with a slightly elevated white blood count, that would be consistent with tissue damage caused by torsion. More importantly, he indicated that when the claimant's testicle was removed there was no sign of infection. This is in direct contradiction to Mooney's assertion that infection was the reason for the claimant's condition.

Additionally, the Surgical Pathology Report indicates that the claimant had "TORSION RIGHT TESTICLE WITH INFARCTION". Noticeably absent from that report is any indication that the claimant had an infection. Lastly, a report from Dr. James H. Golleher, dated November 12, 2004, indicates that the claimant suffered from, "extensive necrosis and acute inflammation compatible with torsion." His report makes absolutely no mention that the claimant suffered from any infection to his testicle. Instead, it indicates that the claimant suffered from a torsion.

Ultimately, I find that the preponderance of the evidence shows that the claimant's injury was caused by his

strain at work. There is no evidence in the record to indicate that he suffered from any injury outside of work that would cause an onset of symptoms consistent with his injury. Each of the claimant's treating physicians ultimately concluded that the claimant's injury was a torsion. Accordingly, I find that the Majority errs in relying on the opinion of a doctor that had absolutely no contact with the claimant and that has a opinion that appears to be in direct contradiction to all other opinions offered. For these reasons, I must respectfully dissent from the Majority opinion.

SHELBY W. TURNER, Commissioner