

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705388

TIMOTHY MOFFITT,
EMPLOYEE

CLAIMANT

JRD ENTERPRISES, INC.,
EMPLOYER

RESPONDENT

FIRSTCOMP INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 9, 2008

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

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

Respondents represented by the HONORABLE WILLIAM C.
FRYE, Attorney at Law, North Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed February 29, 2008. In
said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On March 21, 2007, and all other relevant dates, the relationship of employee-employer-carrier existed between the parties.
3. The appropriate weekly compensation rates are \$413.00 for total disability and \$310.00 for permanent partial disability.

4. The claimant has failed to prove that he sustained a compensable injury to his abdomen, in the form of a hernia or otherwise, on March 21, 2007, or any other date during his employment with this respondent. Specifically, the claimant has failed to prove by the greater weight of the credible evidence the existence of a causal relationship between his diagnosed incarcerated incisional hernia and incidental umbilical hernia and any employment related activity or event with this respondent, on March 21, 2007, or any other date during his employment.

5. The respondents have denied the occurrence of a compensable injury to the claimant's abdomen and have controverted this claim in its entirety.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury covered by the Act; however, the claimant has failed to

establish the elements necessary to prove the compensable injury by a preponderance of the evidence.

Therefore we affirm and adopt the February 29, 2008 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's opinion. The majority, by affirming and adopting the Administrative Law Judge, finds that the claimant failed to prove compensability of any injuries incurred on March 21, 2007. Based on a de novo review of the record, I find that the claimant has met his burden of proof by a preponderance of the evidence for a compensable specific incident hernia, and therefore, I must respectfully dissent.

History

The claimant is a 53-year-old divorced father of six children, with a ninth grade education and GED. The claimant testified that prior to the injury he worked for the respondent as an apprentice electrician for three years. Furthermore, the claimant testified that on March 21, 2007, while working for the respondent, the claimant was instructed to dig a ditch and suffered a hernia injury. The claimant testified that the job of digging required bending, twisting, and jabbing heavy pipe. The claimant testified that while twisting sideways and attempting to insert the heavy pipe, he suffered an intense pain around his naval area that felt like he was "stabbed." The claimant testified that he immediately stopped working and reported to his supervisor, Ed Yerkin, that he had hurt himself and had to get out of the ditch and quit digging. The claimant testified that Mr. Yerkin and the claimant had, in the past, joked about old age and aches and pains. The claimant testified that after resting for approximately 15 minutes, the claimant continued working despite the pain, and did not seek immediate medical assistance, because he could not afford proper medical care. The claimant testified that he continued to suffer pain for

the following two weeks after the initial injury on March 21, 2007, but it was not as severe as the initial pain. The claimant testified that he was able to alleviate the pain by applying pressure to the injured area. The claimant testified that approximately two weeks after the injury was sustained, the claimant woke up and had a baseball-sized bulge in the area of his navel, and he was subsequently transported to the emergency room by ambulance.

Arnold Smith, the owner of the respondent, testified that he was informed about the injury on the day it occurred. Specifically, when asked if the claimant told him that he had hurt himself, Mr. Smith testified:

"[Y]es, he said he strained himself...[t]he reason for it is because they had to dig underneath a footing, and we had a backhoe operator at both ends to get as far as we possibly could. But, you know, he didn't elaborate on the type of strain he had; just, you know, strained a muscle, grind a gut, you know something in general form."

When asked further about what point in time the claimant informed him of the injury, Mr. Smith testified it was the "day we was out there, the 21st."

Surgery was performed on the claimant by Dr. Robert A. Petrino, who was able to remove the incarcerated incisional hernia, as well as an umbilical hernia that was located next to the incisional hernia. Upon being released from the hospital on April 16, 2007, the claimant was instructed to refrain from working and was not released to return to work until June 25, 2007.

Discussion

I find that the Administrative Law Judge correctly ruled that this claim will not be governed by Ark. Code Ann. § 11-9-523 because the injury here is the result of an incisional hernia. This injury is therefore governed by Ark. Code Ann. § 11-9-102 et seq. For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002), 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 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.

The causal relationship between the injury and employment-related activity was recognized by Mr. Smith when he testified that the claimant told him of the injury on March 21, 2007, the day the injury happened. Specifically, when asked if the claimant told him that he had hurt himself, Mr. Smith testified:

"[Y]es, he said he *strained himself...[t]he reason for it is because they had to dig underneath a footing, and we had a backhoe operator at both ends to get as far as we possibly could. But, you know, he didn't elaborate on the type of strain he had; just, you know, strained a muscle, grind a gut, you know something in general form.*" (Emphasis added.)

Further, when asked when the claimant told him that, Mr. Smith said he was informed the "day we was out there, the 21st." Thus, Mr. Smith, the owner of the company, was informed of the injury and *acknowledged the reason* for the injury. The claimant stated that he felt pain around his navel and that he felt as if he were "stabbed." The claimant further testified that it felt like a Charley Horse because it tightened up "a whole

bunch." Also, Mr. Smith testified that the claimant told him that he "strained a muscle, grind a gut."

In Siders v. Southern Mattress Co., 240 Ark. 267, 398 S.W.2d 901 (1966), the Supreme Court of Arkansas, in reversing the Commission's denial of benefits, stated in relevant parts:

Just as the Act does not require an immediate diagnosis, it also *does not require that the claimant insist that the doctor's history contain the gory details of the occurrence....* From all the circumstances, there is no question but that the employer had timely and proper notice of the occurrence that caused the hernia.... *Appellant is not required to give notice that he has a hernia - he is not a doctor - the statute merely requires that appellant give notice of the occurrence which resulted in a hernia. (Emphasis added.)* Id at 269-271.

Next, the claimant is required to show proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services as well as medical evidence supported by objective findings. The claimant was admitted to the Northwest Medical Center on April 11, 2007 with Dr. Michael Green noting a periumbilical incarcerated hernia. The surgery to relieve this condition was performed on April 13, 2007 by Dr. Robert

Petrino. This shows that the claimant required medical services be performed as a result of the injury he sustained at work and that the medical professionals the claimant saw found the required objective medical findings.

Lastly, I find that the claimant has shown that the injury is identifiable by time and place. The claimant, his supervisor, and the owner of the respondent all testified regarding the time when the claimant was injured and stopped working and all agreed that March 21, 2007 was the date of the injury. This testimony satisfies the requirement that the claimant show that the injury be identifiable by time and place of occurrence. The claimant testified that he continued to experience pain throughout the two weeks between his initial injury and diagnosis. When asked if he sought any medical attention, the claimant testified that he had no insurance, "so I've just about got to be hauled down to them (hospital)."

The majority, by adopting the decision of the Administrative Law Judge, finds that the claimant's testimony is insufficient to prove a causal relationship between the hernia and his employment, and that "[t]he claimant's testimony is directly contradicted by the

medical evidence presented...there is absolutely no mention of any employment-related event or activity as precipitating the claimant's difficulties." It does not matter that the claimant, while in excruciating pain after waking with a baseball-size mass near his navel at 5:00 a.m., failed to inform the emergency room personnel of the employment-related activity; his mind was more concerned with giving the medical professionals information about the pain he was feeling and less concerned about explaining the causal elements of a Workers' Compensation claim. The claimant is only required to inform the employer of the injury. Both the claimant's immediate supervisor and the owner of the company were informed about the injury on the day it occurred. The two witnesses for the respondent admitted that they were informed of the injury and that it occurred at work. Therefore, I find that the employer had timely and proper notice of the occurrence that caused the hernia.

PHILIP A. HOOD, Commissioner