

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H205844**

ROBERT W. SCOTT, EMPLOYEE

CLAIMANT

**CORRECT CRAFT HOLDINGS, LLC and
BASSCAT, EMPLOYER**

RESPONDENT

**ZENITH INSURANCE COMPANY,
CARRIER/TPA**

RESPONDENT

OPINION FILED JUNE 6, 2023

Hearing before Administrative Law Judge, James D. Kennedy, on the 19TH day of April, 2023, in Mountain Home, Baxter County, Arkansas.

Claimant is represented by Mr. Frederick S. "Rick" Spencer, Attorney-at-Law, Mountain Home, Arkansas.

Respondents are represented by Mr. James A. Arnold, II, Attorney-at-Law, Ft. Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 19th day of April, 2023, to determine the issues of compensability for a work-related hernia injury; medical in regard to the injury; entitlement to temporary total disability; plus attorney fees. All other issues were reserved. The respondents contend that the claimant is not entitled to Arkansas workers' compensation benefits for his hernia. At the time of the hearing the parties stipulated that the claimant earned an average weekly wage of \$679.32 for a TTD/PPD rate of \$453.00/\$340.00, respectively. A copy of the Prehearing Order was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and that an employer/employee relationship existed on or about August 3, 2022, and all relevant times.

The claimant's and respondent's contentions are all set out in their respective responses to the prehearing questionnaire and made a part of the record without objection. Robert Scott, the claimant, and his wife, Jennifer Scott, were the two (2) witnesses to testify. From a review of the record as a whole, to include medical reports and other matters properly before the Commission and having had an opportunity to hear the testimony and observe demeanor of the witnesses, the following findings of fact and conclusions of law are made in accordance with Arkansas Code Annotated § 11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on August 3, 2022, and all relevant times. At the time, the claimant earned an average weekly wage of \$679.32 a week, sufficient for a TTD/PPD rate of \$453.00/\$340.00, respectively, per week.
3. That the claimant has failed to satisfy the required burden of proof to show that he sustained a compensable, work-related hernia on August 3, 2022.
4. That, consequently, all other issues are moot.
5. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Prehearing Order, along with the prehearing questionnaires of the parties were admitted into the record without objection. The claimant submitted an exhibit which was admitted without objection consisting of seventeen (17) pages of medical reports. The respondents also submitted an exhibit which was admitted without objection consisting of twenty (20) pages of medical reports.

The claimant, Robert Scott, testified that he was born on January 20, 1971, and was fifty-two (52) at the time of the hearing. His job consisted of laying fiberglass in high end bass boats and stated that he was bending over, laying fiberglass when he felt an immediate pain. He had started work for the respondent on February 2, 2022. He testified that he had gotten pretty good at his job and had finished up a job laying fiberglass in regard to live-wells and went to assist another worker. He had bent over laying a piece of fiberglass and didn't like the way it looked and pulled it back. "I raised up, and it was close to being finished, time for lunch. When I raised up I felt a sharp pain, and I thought, 'that was weird.'" The pain was sporadic and was not normal, "and it kept getting worse so I went to my supervisor, Jessie, and told him, I said 'Something's wrong.'" "Maybe I need to call my wife. She has some medical background." "So I laid my shirt and I took a picture of it, that I had a little egg right there in the beginning. When I raised my shirt it was gone, and I thought, 'Well, that's weird. That doesn't make sense.'" He went on to state that he took a picture of it and sent it to his wife who said "You might want to go to the hospital, cause it could be a strangulated hernia." The claimant then told his supervisor and left for the hospital. (Tr. 6-9) The claimant testified he would sometimes lift the tops of boats which were very heavy and guessed that they weighed probably a thousand pounds, with four (4) or five (5) guys on each side lifting. When asked if he had any pre-existing problems with hernias, he admitted "there was a bulge or whatever" but that he had never had surgery for a hernia. (Tr. 10) The claimant thought that after he went to the emergency room, he saw Dr. Lincoln Payton, the workers' compensation doctor. He was then given a referral to see a surgeon, Dr. Carlisle, and was taken off work until the 15th, he thought. Dr. Carlisle performed surgery which took care of the

problem. (Tr. 11-13) The claimant returned to work for the respondent for a week performing light-duty and was then told that they did not need his services, and was off work until November 17, 2022. He then returned to work for another employer, Waste Connections at Midway. (Tr. 14) The claimant stated the respondent knew about his injury immediately. (Tr. 15)

Under cross-examination, the claimant admitted that at the time he felt the pain on August 3rd, he was not lifting anything, but that he had bent over the boat and had straightened up. He also admitted he remembered telling the doctor in the emergency room he had a hernia in his belly button and he felt that it had gotten worse today. “I told them I had a bulge and something’s wrong because it disappeared and I’m in a lot of pain. And I had spoke to my wife with regard to it.” The claimant went on to admit that he had taken a picture of his belly button because there had been a “little goose egg bulge” but that all of a sudden it was gone and that scared him. “All I knew is I was in a lot of pain.” He admitted he already had the bulge for a year when he went to Dr. Carlisle, which was before he went to work for the respondent. He also admitted that he had not had any incident, accident, or injury, while working for the respondent for his six (6) month work period. He also admitted he had been taken off work initially, then returned to work, and worked a week. He was released to return to work on October 17. The claimant admitted that if the records provided he had been last seen by Dr. Carlisle on October 3rd, and his release was two (2) weeks later, there was a period that he didn’t have a job. (Tr. 17-20)

Under re-direct, the claimant testified that he had done a good job for the respondent and would bend way over while making the live wells, almost down to touching his toes. When he raised back up there was really a sharp pain. He wondered “What

was that.” “It was like somebody was kicking me on the inside of my stomach with boots on.” That’s when I said, “Something’s wrong.” (Tr. 21-23)

Jennifer Scott, the wife of the claimant, was called. She stated that prior to the injury, the claimant never had any limitations, and never had any issues being able to do anything. On the day of the injury, and until Dr. Carlisle released him to return to work, his work capabilities were greatly diminished. She also stated that she had been a nationally registered EMT basic, but that her license had lapsed. (Tr. 25-26)

In regard to medical records, the claimant submitted seventeen (17) pages of medical reports. The initial report dated August 3, 2022, was a report from the Baxter Regional Emergency Room which provided that the claimant presented with a complaint of abdominal pain and stated that he had a hernia in his belly button. The report went on to provide for a finding of a ventral hernia with a loop of bowel in the opening. (Cl. Ex. 1, P. 1-4) An abdominal CT on the same date confirmed this finding. (Cl. Ex. 1, P. 5)

The claimant presented to Dr. Carlisle on August 15, 2022. The report provided for an umbilical hernia that was thought to be acquired. It also stated that the claimant had provided he was bent over the side of a boat when all of a sudden, he felt a tear when standing up. The claimant did not remember when he first noted it but it was possibly a year or more. He bent over wrong and it “popped out.” (Cl. Ex. 1, P. 6-8) The claimant returned to Dr. Carlisle on September 9, 2022, and a robot assisted lap umbilical hernia repair with mesh was scheduled. (Cl. Ex. 1, P. 9-11)

The claimant was admitted into Baxter Regional for surgery on September 16, 2022, for the repair of the umbilical hernia. (Cl. Ex. 1, P. 12-14) The claimant then returned to Dr. Carlisle on October 3, 2022 for a follow-up. The report provided the

claimant was improving and it recommended a limit in regard to heavy lifting for two (2) weeks and then the claimant could return to his normal activities. (Cl. Ex., P. 15-16)

The respondent also submitted medical reports which consisted of twenty (20) pages and which was the same as many of the claimant's reports. The hospital records were similar to the claimant's but also included a release that provided that the claimant could return to work on August 15, 2022, light-duty, with no lifting over fifteen (15) pounds. (Resp. Ex. 1, P. 1-9) A report from Dr. Lance Lincoln dated August 4, 2022, provided the claimant stated he was bent over a boat, fiber-glassing, and when he raised up, he felt a sharp pain in his abdomen. The pain had declined but the bulge in his navel was tender. The report provided claimant was injured yesterday. An umbilical hernia without obstruction was assessed with light-duty and no lifting. (Resp. Ex. 1, P. 10-11)

DISCUSSION AND ADJUDICATION OF ISSUES

In regard to the primary issue of compensability, the claimant has the burden of proving, by a preponderance of the evidence, that he is entitled to compensation benefits for the injury under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained his burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated § 11-9-704. *Wade v. Mr. Cavananugh's*, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. *Weldon v. Pierce Brothers Construction Co.*, 54 Ark. App. 344, 925 S.W.2d 179 (1996)

The specific requirement for establishing a hernia under the Arkansas Workers' Compensation Act is set forth at Ark. Code Ann. § 11-9-523 as follows:

- (a) In all cases of claims for hernia, it shall be shown to the satisfaction of the 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;
 - (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.

The above-statute does not provide benefits for every injury sustained by an employee in the course of his employment; thus the statute provides no benefits in claims for a hernia unless the five (5) different things are shown to the satisfaction of the Commission. *Humbert v. Arkansas State Hwy. & Transp. Dept.*, 270 Ark. 853, 606 S.W.2d 377 (1980).

In the present matter, the claimant contends that he felt a tearing or sharp pain when he raised up from fiber-glassing on a bass boat which they were building for the respondent employer. He admitted he told the ER doctor he had a hernia in his belly button and he felt that it had gotten worse on that day. (August 3, 2022) He testified, “I told them I had a bulge and somethings wrong and it disappeared.” There had been a, “little goose egg bulge” and it disappeared. He also admitted he had the bulge for a year prior to presenting to Dr. Carlisle, which was prior to the time when he started working for the respondent.

In the present matter, none of the treating physicians opined that the claimant's hernia was caused by a work-related accident. *See, Jaramillo v. Sys Contr.*, 2014 Ark. App. 552, 445 S.W. 3d 524 (2104). That based upon the medical records and the testimony of the claimant, it is clear the hernia had pre-existed for over a year, even prior to the claimant beginning work for the respondent. It is also clear that the Arkansas Workers' Compensation Act is to be strictly construed. Consequently, there is no alternative but to find that the claimant has failed to satisfy the requirements for a work-related hernia injury pursuant to Arkansas Code Annotated §11-9-523. Consequently, all other issues are moot.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the claimant has failed to satisfy the required burden of proof that his claim for the hearing is compensable. Consequently, all other issues are moot.

If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge