

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H205844

ROBERT W. SCOTT,  
EMPLOYEE

CLAIMANT

CORRECT CRAFT HOLDINGS, LLC &  
BASSCAT, EMPLOYER

RESPONDENT

ZENITH INSURANCE COMPANY,  
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED SEPTEMBER 13, 2023

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

Claimant represented by the HONORABLE FREDERICK S. "RICK" SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by the HONORABLE JAMES A. ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed June 6, 2023. The administrative law judge found that the claimant failed to prove he sustained a compensable hernia. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved he sustained a compensable hernia. The Full Commission finds that the medical treatment of record was reasonably necessary, and that the claimant proved he was entitled to a period of temporary total disability benefits.

I. HISTORY

Robert W. Scott, now age 52, testified on direct examination:

Q. Now you have had pre-existing problems with your hernias, is that right?

A. There was a bulge or whatever.

Q. Did you ever have surgery for the hernia?

A. No, sir.

Q. So you never really knew anything other than this little bulge, is that correct?

A. Yes, sir.

Mr. Scott testified that he became employed with the respondents in February 2022. The claimant testified on direct examination:

Q. And you worked for Basscat and Vinway, is that right?

A. Yes.

Q. Just for the record, because some people might not know what Basscat does, what is Basscat producing?

A. They make high end fishing boats.

The parties stipulated that the employee-employer-carrier relationship existed on or about August 3, 2022. The claimant testified on direct examination:

Q. And it's my understanding that you were laying fiberglass in the bow of one of those big high-end boats, and you were bending over laying that fiberglass and felt an immediate pain, is that correct?

A. Yes....I went to the supervisor and asked what can I help with, and he was laying fiberglass in a boat, and the man that does it there as well, he needed help because they had three to get done that day....I mixed up some residue and went over there and started doing that boat. I bent over, and you lay a piece of fiberglass about that long in there after you've soaked it, and I didn't like the way it laid, it wasn't smooth and nice and it didn't look very nice, so I pulled it back up. 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." My jug of resin was almost gone, depleted, because I knew it was close to lunchtime, so as I went to go dump the excess amount of resin it was an odd, it wasn't like your heart pumps,

you know how you hit your finger with a hammer, you heart pumps and you feel pain? Well, this was sporadic and it wasn't normal, and it kept getting worse, so I went and spoke to my supervisor, Jessie, and told him, I said, "Something's wrong."

The respondents' attorney cross-examined the claimant:

Q. At the time you felt pain on August 3<sup>rd</sup> you were not lifting anything?

A. No, I was not.

Q. Okay. What you did was you had been bending over the boat, and when you raised, when you straightened up is when you felt pain?

A. Yeah.

The claimant testified that he "clocked out" from work following the incident and drove himself to a hospital.

The medical evidence corroborated the claimant's testimony.

According to the record, the claimant received emergency treatment at Baxter Regional Medical Center on August 3, 2022:

51 yo M pt presents for abd. pain. He has a hernia at his belly button that he feels he has gotten worse today. He felt a moderate to severe tearing pain....

Abdomen is soft and nontender, no hepatosplenomegaly.

There is a have a (sic) buccal hernia present easily reduced.

A physician diagnosed "1. Umbilical hernia, 08/03/2022." A CT of the claimant's abdomen and pelvis was taken on August 3, 2022 with the impression, "Ventral hernia with a loop of bowel in this with the opening of the hernia measuring 3.1 cm."

The record contains a Work/School Release Form dated August 3, 2022. The Work/School Release Form indicated, "He/she may return to work/school after this date: 8/15." The claimant was restricted to "No heavy lifting over 15 lbs.....Restrictions apply through this date: 8/15 or cleared by Surgeon."

Dr. Lance R. Lincoln reported on August 4, 2022:

Wrks at Bass Cat. Yesterday working on a boat bent over fiberglassing. New job for him. Leaning over the boat and when he raised up got a sharp pain in abdomen. Was sharp. Rated at 8/10. Since he has a bulge in his navel. The pain has steadily declined but the lump is really tender. Went to ER and [did] CT. Showed the hernia and it was tender. Made a referral to surgery on the 15<sup>th</sup>. Only seeing me due to protocol....

ABDOMEN: normal, bowel sounds present, soft, 3 cm umbilical hernia, and very tender. Easily reduces, nondistended.

Dr. Lincoln assessed "1. Umbilical hernia without obstruction and without gangrene." Dr. Lincoln assigned "Light duty, no lifting."

Dr. John A. Carlisle examined the claimant on August 15, 2022:

Patient words: I was doing fiberglass bent over the side of a boat. I had done it several times that day when all of a sudden I felt a tear after standing up.

The patient is a 51 year old male who presents with an umbilical hernia. This hernia is thought to be acquired. Symptoms include bulge in the paraumbilical area (just superior to umbilicus) and abdominal pain. The pain is located in the lower abdomen. There is no radiation. The patient describes the pain as dull and aching. Onset was sudden 12 day(s) ago. Onset followed bending ("bending over into the side of a boat working fiberglass, stood up and it stung"). The symptoms occur constantly. The patient

describes this as moderate in severity and unchanged. Symptoms are exacerbated by bending (& twisting). Symptoms are relieved by recumbency.... The injury is currently under review for a worker's comp claim. Claim # unavailable at this time as they are "investigating" the cause of the injury....

**Today's Impression:** 08/15/22 – JAC – Patient seen today for hernia related concerns. He does not remember when he first noticed it but possibly a year or more. He reports the other day at work he bent over wrong and it "popped out and was very painful". He was evaluated in the ER shortly after that where a CT scan was completed. I reviewed his results which revealed a ventral hernia with a loop of bowel in the opening approximately 3.1 cm in size. On exam, he has a reducible 1cm umbilical hernia which is tender on exam. I would recommend a robotic repair of his hernia[.]

The claimant testified that he returned to light-duty work for the respondents on or about August 15, 2022. The claimant testified that he performed light-duty work for approximately one week: "I worked the whole week until Friday, and then I was brought into one of the offices and said they no longer needed my services."

Dr. Carlisle performed surgery on September 16, 2022: "DA VINCI GEN XI VENTRAL HERNIA, robot assist laparoscopic umbilical hernia repair with mesh." The pre- and post-operative diagnosis was "Umbilical hernia."

Dr. Carlisle noted on October 3, 2022, "Post op visit s/p RA umbilical hernia repair. He is doing well. His surgical incisions are healing well. I advised to continue to limit heavy lifting for 2 additional weeks and then he can return to normal activity. He may f/up with me as normal."

A pre-hearing order was filed on March 14, 2023. The claimant contended, "The Claimant contends that he sustained a compensable hernia while performing employment services for the respondent employer. His injury was sudden and his need for surgery was directly related to him bending over a boat while laying fiberglass and exerting himself for employer requiring immediate medical intervention. The Claimant contends that he is entitled to payment of the medical expenses related to his treatment for the Hernia. The Claimant contends that he is entitled to TTD (dates to be determined)."

The respondents contended, "Respondents contend that the Claimant is not entitled to Arkansas Workers' Compensation benefits for his hernia."

The text of the pre-hearing order indicated that the parties agreed to litigate the following issues:

1. Compensability of work-related hernia injury.
2. Claimant's entitlement to medical and reimbursement for medical bills related to his hernia claim.
3. Entitlement to past due temporary total disability benefits, the dates to be determined.
4. Controverted attorney's fee.
5. All issues are reserved.

A hearing was held on April 19, 2023. The claimant testified on re-direct examination:

Q. Help the judge understand what you meant by bending. I've been there, I've seen the livewells and those kinds of

things, but you're going to have to kind of explain what do you mean by "bending over"? Can you kind of demonstrate that for the judge?

A. I can. I'll use the bannister if that's okay....I was right on the bow in a hole where, I think that's where they put the logs in. It's an elongated hole about that wide (demonstrating). I bent over like this (demonstrating) and way up inside there, I had to move my nose or my mouth when I'm up underneath there trying to pump this fiberglass in there laying flat like this paint is here on this black line....

Q. So for the record, we don't have a video here, but for the record, you're leaning way over, almost down to where you're touching your toes?

A. Yeah. I was actually – my head was hidden. You can hit your head on that bottom of the boat. That's how far into the boat I was.

Q. Okay. And you're in this, would you say this is an exaggerated bend over?

A. Yes, sir. I was bearing down like this (demonstrating). I was almost on my tippy toes, yes.

Q. All right. So when you raised back up, you felt something tear?

A. Yeah. There was a really sharp pain, and I thought "What was that?" And I probably, from here to that door you walk, there's a doorway right there, maybe five feet from where I was at....it was like somebody was kicking me on the inside of my stomach with boots on. That's what it felt like....I told my supervisor, Jessie, clocked out, and I drove myself to the hospital.

An administrative law judge filed an opinion on June 6, 2023. The administrative law judge found that the claimant failed to prove he sustained a compensable injury. The claimant appeals to the Full Commission.

## II. ADJUDICATION

Ark. Code Ann. §11-9-523(Repl. 2012) provides, in pertinent part:

- (a) 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 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.
- (b)(1) In every case of hernia, it shall be the duty of the employer forthwith to provide the necessary and proper medical, surgical, and hospital care and attention to effectuate a cure by radical operation of the hernia, to pay all reasonable expenses in connection therewith, and, in addition, to pay compensation not exceeding a period of twenty-six (26) weeks.

An administrative law judge found in the present matter, “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.” The Full Commission does not affirm this finding.

The claimant, who the Full Commission finds was a credible witness, testified that he suffered from a pre-existing “bulge” in his abdomen. There is no indication of record, however, that the claimant required medical treatment for a hernia prior to the work-related incident in the present matter. The claimant became employed with the respondents in February 2022, and the parties stipulated that the employment relationship existed on August 3, 2022. The claimant testified that he was “bending over” the bow



of a boat during the course of his employment with the respondents, installing fiberglass. The claimant agreed on re-direct examination that he was “leaning way over” into a boat to the extent that he was nearly touching his toes. The claimant testified, “When I raised up I felt a sharp pain....it was like somebody was kicking me on the inside of my stomach with boots on.” As the Full Commission has discussed *supra*, the medical evidence of record corroborated the claimant’s testimony. It was noted at Baxter Regional Medical Center on August 3, 2022 that the claimant “felt a moderate to severe tearing pain.” Dr. Lincoln noted on August 4, 2022, “Leaning over the boat and when he raised up he got a sharp pain in abdomen. Was sharp.” Dr. Carlisle noted the claimant’s credible history on August 15, 2022, “I felt a tear after standing up.”

The Full Commission finds in the present matter that occurrence of the hernia (1) immediately followed as the result of “sudden effort.” The claimant testified that he felt a sharp pain after leaning over, nearly touching his toes, and raising up. The Arkansas Court of Appeals has held that an employee sustained a compensable hernia after “bending over and straightening up.” *See Price v. Little Rock Packaging Co.*, 42 Ark. App. 238, 856 S.W.2d 317 (1993). The Full Commission likewise finds in the present matter that the claimant’s hernia occurred immediately following his “bending and straightening” at work on August 3, 2022.

The Full Commission also finds that there was (2) severe pain in the hernial region following the incident. The claimant credibly testified that he felt a “sharp pain” in his abdomen, “like somebody was kicking me on the inside of my stomach with boots on.” The evidence demonstrates that the claimant (3) ceased work immediately. The claimant testified that he “clocked out” immediately following occurrence of the hernia in order to seek medical treatment. The claimant proved (4) that notice of the occurrence was given to the employer within forty-eight (48) hours thereafter. The claimant testified that he informed his supervisor of the occurrence immediately following the accident. Finally, the evidence demonstrates that (5) the attendance of a licensed physician was required within seventy-two (72) hours after the occurrence. The Full Commission thus finds that the claimant proved he sustained a compensable hernia in accordance with each applicable element of Ark. Code Ann. §11-9-523(a)(Repl. 2012).

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved he sustained a compensable hernia in accordance with Ark. Code Ann. §11-9-523(a)(Repl. 2012). We find that the medical treatment of record was reasonably necessary in accordance with Ark. Code Ann. §11-9-523(b)(1)(Repl. 2012) and Ark. Code Ann. §11-9-508(a)(Repl. 2012). The evidence demonstrates that the claimant

remained within a healing period and was totally incapacitated from earning wages from August 3, 2022 through August 15, 2022. The claimant returned to work at light duty from August 15, 2022 until the respondents terminated the claimant's employment effective August 22, 2022. The claimant proved he was again totally incapacitated from earning wages and remained within his healing period beginning August 23, 2022 and continuing until October 17, 2022 in accordance with Dr. Carlisle's October 3, 2022 report. The claimant therefore proved he was entitled to temporary total disability benefits from August 3, 2022 through August 15, 2022, and from August 23, 2022 until October 17, 2022. See Ark. Code Ann. §11-9-523(b)(1)(Repl. 2012); *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's determination that the claimant has proved by a preponderance of the evidence that he suffered a compensable hernia.

As highlighted above, Ark. Code Ann. § 11-9-523(a) requires that five criteria be met for a hernia to be compensable:

- (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.

“The policy underlying these rather strict requirements is designed to make the award of compensation for a hernia depending on the manner in which a hernia occurred and not on its mere existence.” *King v. Puryear Wood Products*, 254 Ark. 452, 494 S.W.3d 123 (1973). This is meant to

separate congenital or pre-existing hernias from those resulting from trauma or effort at work. *Id.* Simply put:

The people have seen fit to make, and the legislature has seen fit to leave, a compensable hernia a rather dramatic occurrence under the statute, with little or no room left for question or doubt that it did occur with in the course of employment as an immediate result of sudden effort, severe strain or force applied to the abdominal wall. *Harkleroad v. Cotter*, 248 Ark. 810, 454 S.W.3d 76 (1970).

At issue here is the question of whether, in this instance, “the occurrence of the hernia immediately followed as the result of a sudden effort, severe strain, or the application of force directly to the abdominal wall.” The Majority relies on the language of *Price v. Little Rock Packaging Co.* to support its contention that “bending over and standing up” is sufficient to meet this standard. 42 Ark. App. 238, 856 S.W.2d 317 (1993). However, this ignores the additional testimony from Mr. Price that “when he was lifting loads of paper, he felt an ‘awful pain’ in his side, in the groin area.” *Id.* Mr. Price was not simply stooping and standing, but rather he was lifting loads of paper, which would satisfy the requirement of a “sudden effort, severe strain, or the application of force directly to the abdominal wall.” Bending over and standing up by itself clearly does not meet this definition and there is no precedent in this State that supports a finding that a claimant suffers a compensable injury when the extent of his sudden

effort or severe strain is simply bending over and then standing. And in fact, the court in *Price* did not hold that merely bending over and straightening satisfied the criteria of Ark. Code Ann. § 11-9-523(a). In that case, Mr. Price was bending and straightening over an industrial knife and felt an awful pain in his side, in the groin area, when lifting loads of paper. There is no such proof in the case at hand, and Mr. Scott testified that at the moment he felt a sudden pain, he was not lifting anything, but rather was bending over and felt pain upon standing.

By the claimant's own admission, he was not lifting anything at the time of his alleged injury:

Q: At the time you felt pain on August 3rd you were not lifting anything?

A: No, I was not.

Q: Okay. What you did was you had been bending over the boat, and when you raised, when you straightened up is when you felt pain?

A: Yeah. (Hrng. Tr., P. 16).

This fact was later confirmed by Dr. Lance R. Lincoln on August 4, 2022, who recorded that the claimant was "[!]eaning over the boat and when raised up got a sharp pain in abdomen." (Resp. Ex. 1, Pp. 10-11). On August 15, 2022, Dr. John A. Carlisle quotes the claimant as stating that "I was doing fiberglass bent over the side of a boat. I had done it several times that day when all of a sudden I felt a tear after standing up." (Resp. Ex. 1, Pp. 15-17).

None of the claimant's treating physicians opined the hernia was caused by an acute, work-related accident. It does not necessarily follow that merely bending over and straightening up results in a hernia. More importantly, the claimant had a preexisting hernia for a year prior to beginning work for the respondent employer and admitted such at the hearing:

Q: Now you have had pre-existing problems with your hernias, is that right?

A: There was a bulge or whatever.

Q: Did you ever have surgery for the hernia?

A: No, sir.

Q: So you never really knew anything other than this little bulge, is that correct?

A: Yes, sir. (Hrng. Tr, P. 10).

On the date of the alleged accident, the claimant treated with Dr. Caleb Pingel at Baxter Regional Medical Center, who reported that the claimant "has had a hernia at his belly button that he feels he has gotten worse today." (Cl. Ex. 1, P. 2). In his August 15, 2022 report, Dr. Carlisle noted that the claimant "does not remember when he first noticed it but possibly a year or more." (Cl. Ex. 1, P. 7). None of the claimant's treating physicians have opined that the alleged August 3, 2022 injury was an aggravation of the admitted pre-existing hernia. The claimant's allegations fail on this point alone when taking into consideration the public policy laid out in *Harkleroad* and *Puryear* above as this is the exact type of hernia claim our Rules are intended to prohibit.

The claimant has wholly failed to prove by a preponderance of the evidence that his alleged work-related hernia was the result of a sudden effort, severe strain, or the application of force directly to the abdominal wall. There is no precedent in this jurisdiction supporting any contention that simply standing up, by itself, is sufficient to meet the claimant's burden of proof, and for this reason the ALJ's findings should be affirmed.

For the reasons stated above, I respectfully dissent.

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MICHAEL R. MAYTON, Commissioner