

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.: H400206**

**BRUCE BAKER,  
EMPLOYEE**

**CLAIMANT**

**CITY OF WARREN,  
EMPLOYER**

**RESPONDENT**

**MUNICIPAL LEAGUE WORKERS'  
COMPENSATION TRUST, CARRIER/TPA**

**RESPONDENT**

**OPINION FILED SEPTEMBER 30, 2024**

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, El Dorado, Union County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by the Honorable Melissa Wood, Attorney at Law, Little Rock, Arkansas.

**Statement of the Case**

On July 17, 2024, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A Prehearing Telephone Conference was conducted in the above-styled claim on May 15, 2024, from which a Prehearing Order was filed on that same day. A copy of said order and the parties' responsive filings have been marked as Commission's Exhibit 1 and made a part of the record without objection.

**Stipulations**

During the prehearing telephone conference, and/or hearing the parties agreed to the following proposed stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. That the employee-employer-carrier relationship existed at all relevant times, including on or about September 5, 2023.
3. The Claimant's average weekly wage on September 5, 2023 was \$645.73. His weekly compensation rates are \$431.00 and \$323.00.
4. The Respondents have controverted this claim in its entirety.
5. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

#### Issues

By agreement of the parties, the issues to be litigated at the hearing included the following:

1. Whether the Claimant sustained a compensable injury to his abdominal on September 5, 2023.
2. Whether the Claimant is entitled to medical treatment for his alleged compensable injury.

#### Contentions

The respective contentions of the parties are as follows:

Claimant:

The Claimant contends that he sustained a compensable abdominal injury, for which he is entitled to medical treatment.

Respondents:

The Respondents contend that the Claimant did not sustain a compensable injury on September 15, 2023, pursuant to the Arkansas Workers' Compensation Act. Respondents contend that the medical documentation does not support objective findings, the need for medical treatment or any off-work status associated with an abdominal injury.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witnesses and observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.
3. The Claimant did not prove by a preponderance of the evidence that he sustained a compensable abdominal injury on September 5, 2023. Therefore, the issue pertaining to reasonable and necessary medical care for said alleged injury has been rendered moot and not discussed in this opinion.

**Summary of Evidence**

Mr. Bruce Baker (referred to herein as the "Claimant"), and his son, Bruce Baker, Jr., were the only two witnesses to testify during the hearing.

The record consists of the July 17, 2024 transcript and the following exhibits: Specifically, Commission's Exhibit 1 includes the Commission's Prehearing Order filed on May 15, 2024, and the parties' responsive filings; Respondents' Exhibit 1 comprises

Respondents' Hearing Exhibit Index of Medicals consisting of twenty-nine (29) pages; and Respondents' Hearing Exhibit Index of Non-Medicals consisting of twelve (12) pages has been marked as Respondents' Exhibit 2.

### **Testimony**

#### **Bruce Baker/the Claimant**

The Claimant testified that he worked for the City of Warren. He has prior work experience at KJ Construction, as a heavy equipment operator. The Claimant has performed this type of work for over twenty (20) years. At the time of the hearing, the Claimant was fifty-seven (57) years old. He confirmed that he has worked for the City of Warren over eight (8) years, as a heavy equipment operator.

On September 5, 2023, the Claimant maintains that he injured his stomach area while performing his employment duties for the City of Warren. However, the Claimant testified that it was probably on September 4, 2023, when he got hurt. The Claimant testified that he does not know the exact date of his injury. However, the Claimant testified that he was on the mini track when he injured his stomach. According to the Claimant, he was picking up ramps that weighed around one hundred fifty (150) to seventy-five (75) pounds each when he got hurt, he testified that he had been performing that type of work for thirty (30) days. The Claimant testified that no one witnessed his injury because he was working on a Saturday at the airport. According to the Claimant, the following Monday was a holiday. However, the Claimant maintained that he reported his injury the following night on the 5<sup>th</sup> when he arrived for work. The Claimant stated that his coworkers were aware that he was having problems.

With respect to his injury, the Claimant explained that once he unloaded the ramps, that is when he felt pressure on his stomach. The Claimant testified that that he told his supervisor,

Monte Hearnberger, that he was unloading the ramps and got hurt. However, the Claimant specifically testified that he told Mr. Hearnberger that he had some problems, but he was not sure what it was because he was confused on what was going on. Per the Claimant, he worked the following day with pressure on his stomach although he was unable to do very much but he was still working. According to the Claimant, his wife set him up for an appointment, but he could not see a doctor until two or three days later, which was on a Friday.

The following exchange took place:

Q What did you say to Mr. Hearnberger?

A That's what I'm trying to recollect on because it's been so long ago. I guess, I told him that that was all I was doing that day. You understand that? That all I'd been doing that day, he thought that I probably ..... That's probably where I got hurt was on the ramps.

According to the Claimant, Mr. Hearnberger did a report on his injury, but he did not receive a copy of the paperwork. The Claimant testified that he saw someone (Anthony Rodriguez) that works under Dr. Joe Wharton (his primary care physician) for his alleged injury. He specifically testified that he reported that he was injured picking up ramps. The Claimant testified that he told Mr. Rodriguez that he was pretty sure he was hurt because he was unable to breathe, and "the veins were pulling in his arms." Per the Claimant, at that time, he was prescribed medication for acid reflux. The Claimant denied that his symptoms of acid reflux was caused by his work activities.

The Claimant confirmed that he ultimately underwent evaluation by the workers' compensation doctor, Dr. Carle. According to the Claimant, the nurse case manager went to the appointment with him to see Dr. Carle. The Claimant denied seeing Dr. Carle for a follow-up appointment. Instead, the Claimant returned to his family physician for his stomach symptoms. According to the Claimant, he was told he needed surgery because he had something

protruding out his stomach. However, the Claimant denied he had a hernia. Instead, the Claimant testified that he was told he had a “tore muscle.” He denied ever previously having had a hernia.

On cross-examination the Claimant confirmed that counsel took his deposition on May 16, 2024. The Claimant confirmed that he works for the City of Warren, in the Street Department. He agreed that he runs the machinery and is somewhat a boss and has other members of his crew in line.

The Claimant confirmed that he testified during his deposition that he got hurt on a Tuesday. He confirmed that Monday, September 4, 2023, was Labor Day. The Claimant agreed that September 5<sup>th</sup> would have been that Tuesday. He confirmed that he worked all that day at the airport. The Claimant admitted that during his deposition, he testified that he thought his injury occurred sometime that Tuesday. However, the Claimant admitted that he testified during his deposition that he worked all day Tuesday, but he did not have a problem and was not in pain.

Next, the following exchange took place:

Q Okay. However, when you went to go lay down in bed that night, you had some issues, is that correct?

A Right. Yeah.

Q All right.

A It was bad.

Q And then it was the next Wednesday .....

A And I don't know what date Wednesday was but that's the day I reported it to him.

Q Okay. So you had no symptoms at all until that night, is that correct?

A Right.

The Claimant admitted that he talked to Monte (Hearnsberger) on Wednesday and told him that something was wrong. He admitted that he told Monte that he thought he was having a heart attack. The Claimant admitted that during his deposition he was asked about his symptoms. His response was, "Yeah. I couldn't lay flat." The Claimant agreed that then on Wednesday morning, he had a sausage biscuit for breakfast and went to work. He arrived for work by 7:00 a.m. that morning. The Claimant confirmed that he felt like his food was hung up in his esophagus. He testified that he had a lot of "real large pressure" that was tight in his stomach. The Claimant explained that the food he had eaten would not go down. According to the Claimant, his food was not caught in his throat. Instead, the Claimant testified that when his food got to a certain point, and that is when it started putting pressure on him. The Claimant confirmed that during his deposition, he testified that he had pressure pulling on his veins and could hardly breathe. At that point, the Claimant admitted to telling Monte he thought he was having a heart attack. He agreed that he did not go to doctor because his food went down, and the pressure went away, and he started to get some relief.

He admitted that he worked on Wednesday and felt good that day. The Claimant agreed that *he did not feel anything when he was moving the ramps that day*. He admitted that when *he went to the doctor, he told the doctor the acid reflux was eating him up*.

The Claimant admitted that they are trying to get him in to see a plastic surgeon. He testified that Dr. Wharton scheduled the appointment for him to see the plastic surgeon. The Claimant admitted that Dr. Wharton warned him that there might be a problem with insurance covering the surgery because it is cosmetic in nature.

He agreed that at some point Mr. Hearnberger made a report. The Claimant confirmed that this was done around the time that they sent him to the workers' compensation doctor. At this point, the Claimant agreed that this is what started the process for a workers' compensation claim. The Claimant denied that he was told he needed to see Dr. Carle for an examination at that point. Instead, the Claimant scheduled an appointment for him to see his own doctor first.

Bruce Baker, Jr.

The Claimant's son testified on behalf of his father. Mr. Baker testified that he is currently dating a nurse. He also has a lot of friends working in the medical field, and he has also worked in the medical field. Mr. Baker's dad called him and told him he had a protrusion in his stomach that happened at work. He was not a witness to the alleged incident. Mr. Baker testified that Dr. Wharton has recommended two surgeons. However, one of the surgeons no longer performs this type of surgery. Mr. Baker confirmed that his dad has been diagnosed with diastasis recti, which is a separation of the, a torn muscle.

On cross-examination, Mr. Baker confirmed that his dad testified that he went to work on Wednesday after he had the issue with the biscuit, he lifted some ramps and had no problem doing that.

**Medical Evidence**

A review of the medical evidence submitted shows that on September 5, 2023, the Claimant underwent evaluation by Anthony Rodriguez, APRN. A Chart Note authored by Mr. Rodriguez shows that the Claimant returned for a follow-up visit of a splinter in his thumb. At that time, the Claimant reported that a splinter was still in his thumb and that he had a knot in his thumb. Nurse Rodriguez' assessment of the Claimant was a foreign body in soft tissue. Per



these notes, the Claimant's x-rays showed that the Claimant has arthritis for which a referral to Ortho was suggested, but the Claimant wanted to wait.

On September 11, 2023, the Claimant presented to Nurse Rodriquez with a chief complaint of concern that he feels pressure in the middle of his chest when he eats, as his food digests. The Claimant reported that the pressure moved downward to the abdominal area. Specifically, per these notes, the Claimant presented with a chief complaint of having issues with epigastric pain making his left arm go numb. At that time, the Claimant was noted to have *a history of obesity with BMI of 34.6 and reports that this pain is normally present shortly after eating. He denied any shortness of breath. The Claimant was assessed with "1. Epigastric pain (primary). 2. Gastro-esophageal reflux disease without esophagitis." X-rays of the Claimant's abdomen revealed likely GERD, Gastro-esophageal reflux disease without esophagitis.* The Claimant was instructed to avoid overeating; not to lie flat within 2 to 3 hours of eating any meal; avoid foods that worsen GERD symptoms; take all medications as directed and RTC(return to clinic) if GERD symptoms return. Nurse Rodriquez provided the Claimant with nutrition counseling and weight management information. Specifically, the Claimant was counseled on well-balanced diet consisting of lean meats, fresh fruits, and vegetables, low fat milk and cheeses. He was also counseled for physical activity daily, which included 30 minutes a day at least 5 days a week as tolerated, and increase of water intake. BMI education provided.

A CT scan was performed of the Claimant's abdomen on October 5, 2023. Dr. Rogerich T. Paylor's with an impression of: "1. *No Acute abdominal process.* 2. *Non-Obstructing right nephrolithiasis.* 3. *A 0.4 cm noncalcified nodule right lung base.*"

On October 6, 2023, the Claimant was evaluated by Dr. Joe Wharton. At that time, the Claimant was assessed with, "Gastro-esophageal reflux disease without esophagitis and

*diastasis recti.*” The Claimant was informed of no lifting for one month and return for follow-up in one month. At that time, the Claimant was instructed on weight management and counseling for nutrition.

The Claimant underwent an Independent Medical Examination of his abdomen on November 16, 2023, Dr. Scott W.F. Carle.

**PURPOSE OF EXAMINATION:** Examine for objective findings and issue statement of impairment. Causation, and maximum medical improvement.

**MEDICAL RELATIONSHIP DESCRIPTION:**

The Claimant was advised that we are here today for an independent medical examination and that the examining physician will be Scott Carle, M.D. The information provided during this examination will be used in the assessment and presented in a report-like fashion to the requesting third party. The requesting third party for this exam is Whitney Stratton, RN, CM ICS Consulting Services. No treating physician relationship will be established, and the report will be shared with the requesting party listed above.

The Claimant signed, acknowledging understanding above and opinion will be copied to the requesting third party.

**HISTORY OF CURRENT CONDITION:**

This is a 57-year-old male who was performing lifting tasks at work and had an episode of chest pressure, arm tightness, and dyspnea. The Claimant stated that his job tasks were “more demanding than usual.” He was seen by the PCP and thought that he may have had a torn muscle in his chest or abdomen. He was diagnosed with a diastasis recti.

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**MEDICAL SUMMARY:**

This is a 57-year-old male c/o intolerance to lifting at work by history, there was apparently an episode of chest tightness with exertion and he was told he had reflux. During one of his exams, some attention was given to some protruding of the lineal alba. He underwent a CT scan which did not show acute injury findings. He denies a history of abdominal surgery. He states that his abdominal injury occurred on September 5, 2023, while lifting ramps at work. That same day, he was seen for f/u for a foreign body in the right thumb and his abdominal exam was noted to be “non tender” and “without masses.” *There has been no history of subcutaneous bleeding or ecchymosis after or near the case date.*

## **ABDOMEN:**

Distended and obese abdomen without organomegaly. Linea alba with an approximate 5 cm diastasis above the umbilicus. There does not appear to be a ventral hernia. There is no ecchymosis or hematoma. BS normal and no significant tenderness.

## **DIAGNOSTIC IMPRESSIONS:**

- 1) Idiopathic rectus abdominis diastasis (Major causes: obesity and Age) (No evidence of ventral hernia due to lifting) (non-occupational diagnosis).
- 2) Exertional chest tightness and history of exertional dyspnea.
- 3) Obesity and deconditioning.
- 4) Gastro-esophageal reflux.
- 5) Skin injury to right thumb (not related).
- 6) Hypertension.
- 7) CT abdomen finding; 0.4 non-calcified nodule right lung base. (PCP f/u recommended.)

## **CAUSATION**

Causation: I cannot say, with reasonable medical certainty, the cause of his abdominal diastasis is from an occupational injury. While activity may contribute to some discomfort the condition is considered idiopathic and not otherwise associated with an occupational "event." This condition while present, may lead to intolerance for lifting and would be considered as activity intolerance secondary to the presence of the diastasis. There was no clinical indication of traumatic tissue separation by review of record and current examination. There is no evidence of ventral hernia with the diastasis by ultrasound.

## **MMI**

Maximum medical improvement is the date at which with reasonable medical certainty that further deterioration or recovery is not anticipated. This assessment implies that a condition is permanent and static. One can either state that it has occurred or opine on when it is expected to occur.

There does not exist an occupational injury to the abdomen for which MMI is applicable.

## **MANAGEMENT/DIAGNOSTIC THERAPEUTIC/CASE ANALYSIS**

Management: no continued management under workers 'compensation for these complaints is justified.

Group health management is recommended for his weight, blood pressure and abdominal weakness. Weight loss and core strengthening can be helpful for this condition. *Surgery is rarely indicated.* The history of exertional symptoms of

dyspnea and chest tightness are concerning from a cardiac standpoint. Mr. Baker should consider exercise stress testing with a cardiologist. Furthermore, he has been non-compliant with hypertension management. He is also at risk for obstructive sleep apnea and should also be screened for this.

Diagnostics: ultrasound of the diastasis did not show a hernia or traumatic defect in the diastasis due to injury or trauma.

Therapeutics: None indicated under a work compensation setting.

Case Analysis: No additional records would be needed at this time.

The final medical record is a soft tissue ultrasound abdomen was done on the Claimant's stomach on November 21, 2023, with the following impression being rendered by Dr. Aaron L. Janos: "No soft tissue mass or fluid collection is identified. *No ventral abdominal wall hernia was able to be visualized during Valsalva.*"

### **Adjudication**

#### **Compensability**

The Claimant has asserted that he sustained an injury to his abdominal area arising out of and in the course and scope of his employment with the City of Warren on September 5, 2023, while working for the respondent-employer.

Act 796 of 1993, as codified at Ark. Code Ann. § 11-9-102(4)(A)(i) (Repl. 2012), provides, in pertinent part:

(A)"Compensable injury" means:

(4)(i) 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) (Repl. 2012). "Objective findings," are those

findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i) (Repl. 2012).

The Claimant has the burden of proving that he sustained a compensable injury. Ark. Code Ann. § 11-9-102(4) (E)(i). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, based on the current evidence before me, I find that the Claimant failed to prove by a preponderance of the credible evidence that he sustained a compensable injury to his abdominal area while performing his employment duties on September 5, 2023, while working for the City of Warren.

The parties stipulated that the employment relationship existed on September 5, 2023. The Claimant began working for the City Warren approximately nine (9) years ago. He continued to work for the city as of the date of the hearing. The Claimant testified that his employment duties included that of a heavy equipment operator. He also worked as a crew leader over several employees. His testimony shows that he was injured at work while lifting some heavy ramps as he was unloading the mini track. Per the Claimant's testimony, he does not recall the exact date of his injury. It is well established in workers' compensation law that an employee does not have to know the exact date that he was injured. The Claimant need only establish an injury that is identifiable by proximate date and time.

However, the Claimant did testify that his injury occurred on a Saturday, while working at the airport. He confirmed that there were no witnesses to his accidental injury. Per the

Claimant's testimony, he reported his alleged injury to management the following night when he came to work, which was on September 5, 2023.

The CT scan of the Claimant's abdomen revealed "*no acute abdominal process.*" I am well aware of the fact that the workers' compensation statute does not have a requirement of an injury being "*acute.*" However, there is no evidence demonstrating a traumatic injury to the Claimant's stomach. Nor was a traumatic injury to the Claimant's stomach demonstrated on the soft tissue ultrasound of his abdomen.

The Claimant's testimony of a work-related injury to his stomach is not corroborated by the contemporaneous medical evidence or any other probative evidence of record. In fact, the Claimant initially reported that he had indigestion and some heart-like related symptoms to his treating physician. There is no medically documented complaint of an alleged work-related injury to his stomach until around September 5, 2023. He was complaining of abdominal symptoms prior to his diagnoses of "rectus abdominis diastasis." Moreover, Dr. Carle opined that this condition is idiopathic and not otherwise associated with an occupational "event." Dr. Carle further opined "That this condition while present, may lead to intolerance for lifting and would be considered as activity intolerance secondary to the presence of the diastasis. There was no clinical indication of traumatic tissue separation by review of record and current examination. There is no evidence of ventral hernia with the diastasis by ultrasound." I have attached significant weight to Dr. Carle's opinion because it is consistent with the medical evidence and the Claimant's pattern of complaints. There is absolutely no expert opinion to the contrary. In fact, the CT of the Claimant's abdomen did not show any traumatic findings of any injury such as

bleeding, swelling or anything of that nature. Nor did the Claimant report or complain of any bleeding or swelling.

In fact, no probative evidence whatsoever has been offered to support a finding that the Claimant sustained a specific incident injury while working for the respondent-employer. The only evidence offered in this regard was the self-serving testimony of the Claimant, which I did not find to be credible. Not only is the Claimant's testimony not substantiated by the medical records, the Claimant's own testimony in this regard to his alleged injury is conflicting and confusing. Under these circumstances, I am persuaded that it would require an impermissible amount of sheer conjecture and speculation to attribute the Claimant's current abdominal issues to his work activities with this respondent-employer. Conjecture and speculation, however plausible, cannot supply the place of proof. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 575 S.W. 2d 155 (1979). Here, proof of a work-place abdominal injury is lacking. Therefore, after reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the Claimant failed to prove he sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Act on September 5, 2023, while performing employment duties for the City of Warren.

Having found that the Claimant did not sustain a compensable injury, the issues pertaining to associated benefits for this alleged injury are rendered moot and therefore have not been addressed herein this opinion.

**ORDER**

The Claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable abdominal injury on September 5, 2023, while performing employment duties for the respondent-employer/the City of Warren. As such, this claim is

hereby respectfully denied and dismissed in its entirety. All other issues have been rendered moot and discussed herein this Opinion.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**ADMINISTRATIVE LAW JUDGE**