

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H003832

MICHAEL PRICE, Employee	CLAIMANT
SIMMONS PET FOODS, INC., Employer	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT, Carrier/TPA	RESPONDENT

OPINION FILED JUNE 22, 2021

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by KENNETH L. OSBORNE, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by R. SCOTT ZUERKER, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On April 6, 2021, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on October 14, 2020, and a Pre-hearing Order was filed on that same date. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The relationship of employee-employer-carrier existed between the parties on May 14, 2020.
3. The claimant's weekly compensation rates will be determined at a later date.

Subsequent to the hearing, the claimant and respondent agreed upon compensation rates of \$282.00 for temporary total disability benefits and \$212.00 for permanent partial disability benefits.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether claimant sustained a compensable injury on May 14, 2020 to his abdomen in the form of two hernias.

2. Whether claimant is entitled to medical benefits, including reimbursement for medical expenses incurred.

3. Whether claimant is entitled to temporary total disability benefits from May 15, 2020 to a date yet to be determined.

4. Attorney's fee.

Claimant's contentions are:

“Michael Price will contend that he injured his abdomen on May 14, 2020 while pushing a cart full of pet products. As a result, he has two hernias and other stomach related problems that need treatment. The claimant will contend that on his date of injury, May 14, 2020, he notified his supervisor, Joe Rangel, of his injury. He then was instructed to see the HR person, Alejandro Castaneda. After informing Alejandro of his injury, the claimant ended his shift at 2:00 a.m. rather than the standard 6:00 a.m. Rather than file a workers' compensation claim, Alejandro refused to fill out a work report of injury and instead sent the claimant for treatment using his health insurance. Alejandro still will not file a first report of injury, the claimant needs hernia surgery and ongoing medical treatment. The claimant should be entitled to temporary total disability from the date of the injury and ongoing.”

Respondents' contentions are:

“Respondents controvert this claim in its entirety.”

The claimant in this matter is a 31-year-old male who alleges to have suffered two compensable hernias in his abdomen on May 14, 2020. The claimant testified that he experienced pain when he was dumping a truck. The respondent is in the business of making dog treats that are placed in a metal cart or “trucks” that have wheels or casters that are pushed on a polished concrete floor from one location to another and then dumped onto a line that takes the dog treats to a packaging area. The claimant gave direct examination testimony about the process of dumping a “truck” and how he alleges his two hernias to have occurred as follows:

Q And when you say dumping trucks, what does that entail?
What are you physically doing?

A I am physically pushing and pulling trucks back and forth from a line where we're taking screens off of the truck and dumping the treats into the line.

Q And when you say a truck, will you tell us what a truck is.

A A truck is a metal cart. It's about 6-foot tall, maybe a little taller, about 4-foot wide, about 1,600 pounds or something. It has wheels on it.

Q And are you doing these dumping of these trucks by yourself? Do you have somebody with you? How does it work?

A There is groups. There is two people to a truck. You have to have help while you are dumping, so, yeah.

Q So when you dump a truck, did you go just dump it or do you move it from Point A to Point B? What were you doing when you ultimately had to quit that day?

A I was dumping a truck, but whenever I started to feel pain is whenever I started to look around for him or another lead. And at the end of the day, I was outside. So the pain started whenever I was dumping trucks and I ended up outside and I started to work there a little bit for a few minutes before I got ahold of Joe and told him that I have pain and something is going on.

Q When you say Joe, Joe who? What is his last name?

A Rangel.

Q And what is his job with regard to you at Simmons Foods on that day?

A I believe he was the lead at that time.

Medical records introduced into evidence show the claimant to have two hernias present. One hernia is in the form of a hiatal hernia and was discovered in a CT scan of the claimant's abdomen and pelvis with contrast done on June 18, 2020 at Siloam Springs Regional Hospital. Following is the Impression section of that diagnostic report found at Claimant's Exhibit 1, page 3:

IMPRESSION:

1. Small hiatal hernia is present. Questionable filling defect in the fundus of the stomach measuring 2.6 x 1.8 cm; this could represent a gastric mucosal fold or less likely a mass. This can be further evaluated with an EGD, if clinically indicated.

The second hernia was also detected in the claimant's CT on both May 26, 2020 and on June 18, 2020. The "Abdomen and Pelvis" section of that June 18, 2020 diagnostic report in part states, "A small fat-field umbilical hernia is present." That hernia was also detected in a CT scan done at Washington Regional Medical Center on May 26, 2020. At that time it was described as a "tiny fat containing umbilical hernia."

It is without doubt that diagnostic testing after the claimant's alleged injury date of May 14, 2020 shows objective medical evidence is present for both a hiatal and an umbilical hernia, even though both are described as small.

Due to the location, nature and Arkansas case law, these two hernias must be dealt with through separate legal consideration when determining their compensability under the Arkansas Workers' Compensation Act. The umbilical hernia will be considered as follows.

Act 796 of 1993 made no changes in Ark. Code Ann. §11-9-523, nor specifically repealed prior case law concerning the interpretation of the hernia statute.

(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 a 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 hiatal hernia will be considered as any alleged specific injury would be considered under the Arkansas Workers' Compensation Act in that *Loveless v. Garrison Furn. Co.*, 251 Ark. 776, 475 S.W. 2d

158 (1972) and *Public Employee Claims Div. v. Tiner*, 37 Ark. App. 23, 822 S.W. 2d 400 (1992) both indicate that the specific hernia requirements of Ark. Code Ann. §11-9-523 do not apply to hiatal hernias, in part because they do not breach the abdominal wall and instead breach the diaphragm muscle.

The claimant in this matter underwent a vasectomy on March 6, 2020, which was performed by Dr. John Brizzolara at WR Ozark Urology Fayetteville. The claimant gave direct examination testimony that he had no complications with his vasectomy as follows:

Q With regard to the vasectomy, you did have some complications from it; is that right?

A No.

Q No complications?

A No. No problems with that.

Q Okay. What is the doctor's name that did it?

A Brizzolara.

Q Did he see you for follow-ups?

A I did one follow-up with him, but I didn't do the other follow-up where they test my sperm. I didn't do that.

The claimant testified that after he began to feel pain he got ahold of Joe Rangel, whose actual name is Jose Rangel but he is regularly called Joe. The claimant testified that he was told to go to Simmons medical in the morning by Joe. I note that the claimant left work at 2:00 a.m. and was not scheduled to leave until 6:00 a.m. He testified that the pain was too much for him to continue working.

On May 14, 2020, the claimant was seen at Simmons Care Clinic. Following is a portion of that medical record found at Respondent's Exhibit 1, page 3:

Chief Complaint: Bad pain in low abdomen, swollen genital area.
Thinks it may be hernia x 2 days.

HPI: Left side pain. Had vasectomy 8 wks ago. Pain (unintelligible) 1 month after procedure. Could not get comfortable. Some pain with urination 0 burning > frequency

Assessment:

- 1) Scrotal swelling w/pain
- 2) Fever – abscess / orchitis

Plan: (unintelligible) scrotal – with recent procedure could be Abscess. Will call with u/s results.

That same day the claimant underwent an ultrasound of his testicles bilaterally. That report is found at Respondent’s Exhibit 4 and showed normal testicles with a comment regarding a small hydrocele with the left testicle. On May 18, 2020 the claimant was again seen at Simmons Care Clinic, at which time he presented with fever and his exam indicated that his left testicle was tender to palpation.

Following is a portion of that medical record found at Respondent’s Exhibit 1, page 5:

Chief Complaint: f/u on swollen testicle, per pt – still swollen – Went SSRH ER and had u/s last week.

HPI: Pt in for F/U of swollen testicles. Pt seen and treated with Rocephin and Levaquin. Pt had US which was normal. Pt states that his pain/swelling has gone down, but is still very painful.

Assessment:

- 1) Abscess

RX Prescribed:

Rocephin (unintelligible)

Plan: (pt educated regarding plan/meds) F/U 5/21/2020 for recheck

On May 21, 2020 the claimant was again seen at Simmons Care Clinic. Following is a portion of that medical record found at Respondent’s Exhibit 1, page 6:

Chief Complaint: f/u on scrotal infection. Swelling Improved. Pain not improved.

HPI: Reports swelling better but persistent pain. Reports Compliance with meds. Pt denies covid, (unintelligible) or other symptoms. He had recent vasectomy with urology reported – u/s scrotom.

Assessment:

- 1) Testicular pain
- 2) Fever

Plan: make appt with urology – see if can be today/
tomorrow from Brizzolara. Called & left message. To
ER if worsens.

On May 26, 2020 the claimant was seen at Washington Regional Medical Center emergency department. Following is a portion of that medical record found at Respondent’s Exhibit 1, page 7:

Chief Complaint

Pt arrives pov with c/o generalized abdominal pain, nausea, and diarrhea (5 weeks). Pt reports hernia for 3 weeks. Pt was sent from Simmons clinic for sepsis Concern ue to fevr. Pt temp 98.8 at screening.

History of Present Illness

Chief Complaint: Abdominal pain, reported scrotal abscess or wound

HPI: The patient is a 30-year-old male with no reported past medical history presents emergency department after he was seen at a clinic. He reportedly has been seen multiple times at a clinic and treated for a wound to his scrotum. He is currently taking doxycycline for this. He states he was seen here because they were concerned about sepsis due to fever. He is noted be afebrile upon arrival with a temperature of 98.8. He is noted be tachycardic. He states he has had the wound on his scrotom for several weeks. He denies any discharge. He does report that he has had abdominal pain with vomiting and diarrhea. He denies any other relevant history at this time. He had the rest of his chart reviewed.

The claimant underwent a CT of the abdomen/pelvis with contrast at that time. The report from that diagnostic test performed on May 26, 2020 is found at Respondent’s Exhibit 1, page 16. The Impression states, “No acute abnormality in the abdomen or pelvis.” However, the Findings portion does in part state, “tiny fat containing umbilical hernia is present.” There is no mention of the hiatal hernia noted in the June 18, 2020 CT scan of the claimant’s abdomen and pelvis with contrast previously mentioned.

On June 1, 2020 the claimant was seen at WR Ozark Urology Fayetteville. The medical record from that visit was authored by APN Tasha Kerr. Following is a portion of that medical record found at Claimant's Exhibit 1, pages 6 - 8:

History of Present Illness

30 yo WM presents to clinic for f/u of scrotal pain.

Vasectomy completed on 3/6/20 by Dr. Brizzolara. Patient reports "took it easy for 2 weeks after vasectomy and had very little pain."

He was seen at the Simmons Care Clinic on 5/14/20 with c/o worsening left sided abdominal, scrotal pain/swelling and fever (99-102). He was treated with antibiotics. He had a scrotal US completed at Siloam Springs hospital.

IMPRESSION: Normal scrotal US. He is taking Doxycycline. His swelling and fever have improved, however, his scrotal pain/tenderness have continued.

Scrotal Pain:

MICHAEL PRICE presents with complaints of left hemi scrotal Pain, radiating to the left inguinal region and left lower abdomen.

Assessment

Assessed

1. Spermatocele (608.1)(N43.40)
2. Scrotal pain (608.9)(N50.82)

Spermatocele.

c/o scrotal pain/swelling/fever. s/p vasectomy (3/6/20).

Plan

Scrotal pain

1. Renew: Meloxicam 15 MG Oral Tablet ...
2. POC Urinalysis Automated; Status Complete; ...

On June 8, 2020 the claimant was again seen at WR Ozark Urology Fayetteville, this time by Dr. Brizzolara who had performed the claimant's vasectomy. Following is a portion of that medical record found at Respondent's Exhibit 1, pages 18-20:

Chief Complaint

Left testicular pain after lifting at work after vasectomy

History of Present Illness

Mr. Price reports he is in pain after his vasectomy. He is in pain when he walks, voids, or strains. I informed him that it was a spermatocele from straining. He has been out of work for 1 month. I informed him to continue taking his antiinflammatories and return to work.

Active Problems

Other Problems

1. Encounter for vasectomy (V25.2)(Z30.2)
2. Scrotal pain (608.9) N(N50.82)
3. Spermatocele (608.1)(N43.40)
4. Vasectomy evaluation (V25.09)(Z30.09)

Assessment

Assessed

1. Spermatocele (608.1)(N43.40)

Spermatocele, secondary to lifting

Plan

Scrotal pain

1. PVR US bladder scan, Status: Complete;

Scrotal pain, Spermatocele

2. POC Urinalysis Automated, Status: Complete....

On June 15, 2020 the claimant was seen by Dr. Patrick Schiefelbein at Surgical Associates Siloam Springs. Following is a portion of that medical record found at Respondent's Exhibit 1, pages 23

– 24:

HPI

Patient is a 30-year-old male who presents with multiple complaints. The patient is concerned about having strangulated hernia. The patient was sent by his primary care physician for evaluation. The patient reports some ongoing groin pain. He reports this has become worse after E pushed or move something at work. He states that he noticed severe pain in his groin. As well as lumps developing in his groin. The patient of note had vasectomy performed in January. He had followed up with his urologist after sustaining some swelling to his groin was told that these were cyst likely from straining. The patient however is concerned about development of hernia. He is not necessary noticed any bulge or swelling however he has noticed some increased pain over his groin region. The patient had recent ultrasound which did not show any hernia did not show any signifi-

cant findings of the cyst this was performed last Friday. Patient is reporting some increased constipation. Some increased pain since having this accident he reports at work. As well the patient has noticed some increased heartburn reflux symptoms. Patient has recent been started on Protonix and Carafate. He noticed small improvement while being on these medications.

ROS

Patient reports abdominal pain and constipation; abdominal and left groin pain ongoing for 1 month; patient first noticed after doing heavy lifting/pushing at work. Genitourinary: pain in testicles. He reports no fever. He reports no skin rashes. He reports no respiratory problems reported. He reports no chest pain or palpations reported.

Assessment / Plan

Inguinal pain – patient presents with multiple complaints. Patient on examination found have no significant hernia however could not exclude small hernia. Recommend the patient have CT scan performed for further evaluation of this area. Patient wishes to defer his time. Advised that he will follow-up with primary care physician as well as gastroenterologist in Fayetteville for further discussion evaluation. I discussed the patient that if he had ongoing pain or swelling that he could call us and we will schedule him for a CT scan.

Pain in testicle – Patient has pain in bilateral testicles with swelling noted concerning for cyst. Patient has been evaluated by Urology and was told these were cyst secondary to straining. The patient continues to report some increasing pain as well as reports that the cysts have resolved. There appears no epididymitis. No orchial torsion.

Abdominal pain – Patient is experience some abdominal pain. Reports pain with bowel movements as he has some increased constipation. Patient as well as report some epigastric pain with increased reflux. Advised patient continue on Protonix and Carafate. If this does not improve his symptoms advised to have an EGD. He states that he is scheduled to follow up with Gastroenterology in Fayetteville. Advised if he could not get procedure performed he is welcome to call us and we will schedule him as needed.

On June 16, 2020 the CT recommended by Dr. Schiefelbein at Siloam Springs Regional Hospital was performed. As previously stated, that CT of the abdomen and pelvis with contrast revealed a small fat-field umbilical hernia, which was also seen in the claimant's May 26, 2020 CT of the abdomen and pelvis with contrast done at Washington Regional Medical Center. However, the umbilical hernia was described as tiny at that time. The diagnostic test also revealed a small hiatal hernia. That hiatal hernia was not present in the results of the claimant's May 26, 2020 CT scan at Washington Regional Medical Center.

The claimant began to see Dr. Joshua Roller at Roller Weight Loss and Advanced Surgery on June 24, 2020. Following is a portion of that medical report found at Claimant's Exhibit 1, pages 10 – 12:

Chief Complaint

hernias

History of Present Illness: 30 year old male who has been having abdominal pain for a few months now. He was pushing heavy carts and felt something pop in his abdomen and had diffuse abdominal pain. Now it is constant dull pain. He was then seen by his pcp and was placed on abx and pain medicines. Never figured out a cause for his abdominal pain. He went to the ER after about 3 weeks and was dc'd home. Pt now has diarrhea, some leakage. Has seen his pcp who said he has a mass in his groin. He had a vasectomy prior to all of this, and was seen by him who didn't know anything about his issues. H was then seen by Dr. Schoefelbein who ordered a CT scan on 6.18.20 which showed an umbilical hernia and a questionable filling defect in the stomach. He is scheduled for a EGD with a Surgeon this Monday in Siloam Springs. He had a normal scrotal ultrasound.

Care plan:

This is a 30 yo male with a lot of complaints. Does have a CT scan showing a ventral hernia and a hiatal hernia. Groin pain neg for hernias, needs to f/u with his urologist who did his vasectomy. Needs an EGD which is scheduled for an EGD next week to rule out a gastric mass. Return for follow up appointment to clinic after EGD with reports. May need hernia repair, will wait til after EGD.

The claimant did undergo the recommendation of Dr. Schiefelbein to have an EGD which was performed by Dr. Schiefelbein on June 29, 2020. Following are the Findings and Plan sections of that operative report found at Respondent's Exhibit 1, page 26:

FINDINGS:

1. Severe antral gastritis. Multiple cold biopsies to rule out H pylori.
2. 3 mm gastric ulcer with clean base. No active bleeding was noted.

PLAN: We will have the patient follow up in 1 week for discussion of biopsy results. For now, continue on Protonix and Carafate treatment. We will increase Protonix to twice a day.

The claimant is again seen by Dr. Roller on July 6, 2020, at which time Dr. Roller recommended surgical repair of the claimant's ventral (umbilical) hernia. A few days later Dr. Roller performed a "S/P lap ventral hernia repair" on the claimant.

The claimant in this matter consistently gave testimony at the hearing about stomach pain at the time of the May 14, 2020 incident he alleges and that that pain continued after said incident. He even reports to Dr. Roller, "He was pushing heavy carts and felt something pop in his abdomen and he had diffuse abdominal pain. Now it is constant dull pain." However, the overwhelming balance of the medical records beginning the day of the alleged incident until he began to see Dr. Schiefelbein only deal with complaints of pain in his testicle and groin area. The claimant even underwent an ultrasound of his testicles the day of the alleged incident which was found to be negative. The claimant reported testicle problems to Simmons Care Clinic, and was treated for an infection in one of his testicles. The claimant returned to Dr. Brizzolara in June complaining of testicle pain and was told he had spermatocele secondary to lifting and was told to return to work. The claimant's objective medical finding of umbilical hernia was simply an incidental finding of his first CT scan done at Washington Regional Medical Center on May 26, 2020. It most certainly was not an area that the claimant had complained to prior medical providers about. The claimant's credibility is very low given his testimony about where his pain was located versus the multiple medical records that clearly indicate otherwise.

Joe Rangel, the respondent's production supervisor, gave direct examination testimony about his conversation with the claimant on the day of the alleged incident as follows:

Q In fact, what did he tell you that night?

A It was - - the time was about 12 - - I'm sorry, midnight. At midnight, my lead came up to me and asked me that Michael Price wanted to talk to me.

Q Okay.

A I went up to Line No. 3 where he was packing.

Q Okay.

A When I went up to him, he said that he wanted to go home because where he had his surgery was hurting.

Q Okay.

A And that - - I'm sorry, back up a little bit. When I went up to him, he did say that his doctor put him on light duty and that certain jobs, like dumping trucks, he cannot perform because he is on light duty. I did tell him that is an HR issue, not mine, and they did not pass anything of him being on light duty. He did say that where he had his surgery he was hurting and that he wanted to go home without getting pointed.

As previously stated, I am considering the claimant's umbilical hernia under A.C.A. §11-9-523. The claimant was very vague in his description of the incident he alleges on May 14, 2020. However, the claimant does use the word "pain" and gave testimony about stomach pain. The pain that the claimant had was clearly in his groin and testicles and not at the site of his umbilical hernia region. There was no pain in his umbilical hernia region to cause him to stop work as he had only testicular or groin pain. Notice was not given to the respondent within 48 hours because the claimant did not even realize that he had a problem in the umbilical hernia region until after an incidental finding during his May 26, 2020 CT scan. The claimant did seek medical treatment the day of the incident by a licensed physician, Dr. Duncan, who did an ultrasound of the claimant's testicles because that is where the claimant's pain was located. No treatment was sought for his umbilical hernia within 72 hours because the claimant didn't

even know that he had a medical problem as he had no symptoms in the umbilical hernia region. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable umbilical hernia on May 14, 2020.

As previously stated, I will consider the claimant's hiatal hernia as I would any specific incident injury under the Arkansas Workers' Compensation Act. The claimant does have objective medical evidence of a hiatal hernia from the CT scan done at Siloam Springs Regional Hospital on June 18, 2020. However, the same type of CT scan was done on May 26, 2020 at Washington Regional Medical Center and it does not show the presence of a hiatal hernia. It appears that the claimant's hiatal hernia did not exist on May 26, 2020 and must have developed some time between then and the June 18, 2020 CT scan at Siloam Springs. Even if the Washington Regional CT scan somehow missed the claimant's hiatal hernia, the claimant is still unable to prove a causal connection between the objective medical findings of hiatal hernia and the incident he alleges. The claimant did not have any complaints or symptoms that he reported to medical providers for at least the first 30 days following the alleged incident of May 14, 2020. Instead, he complained of testicle and groin problems. The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable hiatal hernia on May 14, 2020. The hiatal hernia did not even exist before May 26, 2020, and even if it did the claimant has failed to make the required causal connection between the incident he alleges and his hiatal hernia.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on October 14, 2020, and contained in a Pre-hearing Order filed that same date are hereby accepted as fact.

2. The parties' stipulation that claimant was earning sufficient sufficient wages to entitle him to compensation at the weekly rates of \$282.00 for temporary total disability benefits and \$212.00 for permanent partial disability benefits is also hereby accepted as fact.

3. The claimant has failed to prove that he sustained a compensable injury on May 14, 2020 to his abdomen in the form of an umbilical hernia.

4. The claimant has failed to prove that he sustained a compensable injury on May 14, 2020 to his abdomen in the form of a hiatal hernia.

5. The claimant has failed to prove by a preponderance of the evidence that he is entitled to medical benefits, including reimbursement for medical expenses incurred.

6. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits from May 15, 2020 to a date yet to be determined.

7. The claimant has failed to prove that his attorney is entitled to an attorney's fee.

ORDER

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE