

Decision of the Appeal Division**Number: 2001-0417****Date: February 28, 2001****Panel: Jane MacFadgen****Subject: Whether Hernia Arose Out of and in the Course of Employment**

PERSONAL INJURY (ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT) (HERNIA) – Worker suffered paraumbilical hernia after pulling open a trap door that was frozen shut – Worker's claim denied by entitlement officer – Board's general policy that umbilical herniae are not compensable – Review Board allowed worker's appeal – Evidence established a causative relationship between specific work activity and appearance of hernia – Incident was an "unusual circumstance" constituting an exception to Board policy – Employer appeal denied.

Law: WCA (1996): s. 5(1)
Policy: RSCM: #15.50, #96.10
Injury: umbilical hernia

*Umbilical hernia [employer appeal (rev. brd.)]
 Appeal Division Decision No. 2001-0417*

17 *Workers' Compensation Reporter* 343

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- (1) The employer appeals the October 26, 2000 findings of the Workers' Compensation Review Board (the Review Board) which allowed the worker's appeal from a December 11, 1998 decision of an entitlement officer denying the worker's claim for his paraumbilical hernia.
 - (2) An oral hearing of this appeal was not requested, and I am satisfied that the issue may be properly addressed on the basis of the evidence and submissions on file, including the audiotape of the Review Board hearing which I have reviewed. Both parties have provided written appeal submissions.
 - (3) The jurisdiction of the Appeal Division in this appeal is found in section 91 of the *Workers Compensation Act* (the Act). Under section 96(3) of the Act, the Appeal Division "may reopen, rehear and redetermine any matter that has been dealt with by the Review Board." The Appeal Division also has the discretion "to initiate and to conduct a full inquiry into all of the issues arising out of an appeal once the matter is before it" (Decision No. 75 of the governors, 10 *Workers' Compensation Reporter* 753).

Issue(s)

- (4) The issue in this appeal is whether the worker's hernia arose out of and in the course of his employment on November 28, 1998.

Background

- (5) On November 28, 1998, the worker felt his navel pop out while he was pulling a trap door in the drilling deck which was frozen shut. He checked and found his navel protruding, and went to first aid and then sought medical attention. The worker's report of the incident was consistent in both his report to first aid and in his application for compensation to the Board. The supervisor noted on one of the employer's internal reports that this was a very rare occurrence.
- (6) Dr. H's November 28, 1998 examination report noted the worker's report that he felt sudden pain in the umbilical area while pulling heavily on a trap door and, on inspection, noted a new lump in his umbilicus which he pushed back in. He had had mild abdominal pain since that time. Dr. H diagnosed an umbilical hernia, and referred the worker to a surgeon, noting an umbilical hernia with straining, which was easily reducible. He noted no prior medical problems affecting this area.
- (7) The surgeon's November 30, 1998 consultation report noted that two days earlier the worker was lifting a very heavy, frozen door and he suddenly felt a "popping" sound at his belly button and then something popped out. Since then he had been having lower abdominal cramps and his abdomen felt bloated. Dr. N wrote that the worker was constantly getting incarceration of his paraumbilical hernia which was causing him a fair amount of abdominal discomfort and bloating. He carried out an immediate surgical repair on that date.
- (8) A Board entitlement officer noted that the diagnosis was a paraumbilical hernia and that, according to *Rehabilitation Services and Claims Manual* (the Manual) policy #15.50, this was a congenital hernia and not related to stress, strain, work effort or trauma except in the most unusual circumstances. She therefore denied the worker's claim in a December 11, 1998 decision letter.
- (9) Following this decision, the worker's physician wrote the Board on October 25, 1999 that the worker's hernia was clearly initiated by lifting a heavy object at work with immediate symptoms as noted in his admission documentation. He therefore believed that the worker's claim should be eligible for compensation.
- (10) The worker appealed the decision to deny his claim to the Review Board, seeking wage loss and health care benefits for the six-week period that he was unable to work. The employer supported the Board's decision to deny the claim.
- (11) At the Review Board oral hearing, the worker described the incident in which he was pulling on the trap door, which had been frozen shut. He stated that on November 28, 1998, when he reached down and applied pressure on the rope to open the door, he felt a pop in his stomach and noted his navel was protruding. He then sought medical attention. The worker denied ever having a hernia before this work incident.
- (12) The Review Board allowed the worker's appeal in findings dated October 26, 2000. The Review Board concluded that the evidence established a clear cause and effect relationship between a specific work activity involving increased inter-abdominal pressure and the immediate

appearance of the umbilical hernia. The panel noted that there was no evidence that the worker had a problem in this area in the past, and that the only medical opinion on causation was that provided by the worker's doctor who related the hernia to the work incident in question. They noted there was no contrary medical opinion and they accepted the opinion of the worker's attending physician that it was a specific work activity which caused the appearance of the umbilical hernia. The panel concluded that this constituted the exception to the Board's normal policy with respect to umbilical herniae and that the November 28, 1998 incident could be considered an "unusual circumstance."

- (13) The employer has appealed the Review Board findings. In its January 23, 2001 submission the employer noted that it did not dispute that the worker's umbilical hernia appeared immediately following bodily motions performed at work. The employer disputed, however, the Review Board's conclusion that the worker's hernia was work related. The employer emphasized that Manual policy #15.50 stated that umbilical herniae were clearly congenital and not related to stress, strain, work effort or trauma except in most unusual circumstances. The employer argued that the act of pulling on a rope attached to a trap door could not reasonably be considered a "most unusual circumstance" as it was a normal bodily motion, performed with varying degrees of resistance in the course of daily living. The employer submitted that the worker's hernia resulted from purely natural causes due to the internal workings of his body and was therefore not compensable (as set out in Manual policy #15.00).
- (14) The worker responded that there was no evidence that his hernia was congenital as his doctor had no prior record of a hernia. He wrote that the trap door which he was pulling on was frozen shut and it took a lot of strain to get it open.

Law and Policy

- (15) For an injury to be compensable under section 5(1) of the Act, it must arise out of and in the course of the worker's employment. The Board has specific published policies with respect to the adjudication of claims for herniae, based on its understanding of the biologic characteristics of herniae. Manual policy #15.50 states that umbilical herniae are clearly congenital herniae and are not related to stress, strain, work effort or trauma, except in most unusual circumstances.

Reasons and Findings

- (16) I find that the weight of the evidence in this case supports a conclusion that the worker's umbilical hernia likely arose out of the work incident of pulling on the frozen trap door on November 28, 1998.
- (17) Although the Board has a published policy with respect to umbilical herniae which states that they are not related to stress, strain, or work effort except in the most unusual circumstances, it is also true that the Board is required to determine each case in accordance with its merits and justice. Manual policy #96.10 states that regard must always be had to the particular circumstances of each claim to determine whether an existing policy should be applied, or

whether there are grounds for a change in or a departure from a policy. This reflects the general administrative law principle that an administrative body must not fetter its discretion by mechanically applying a policy guideline without regard to the specific circumstances of the individual case.

- (18) I have concluded that the entitlement officer in this case determined that the worker's hernia was not compensable solely by reference to the Board's general policy on umbilical herniae, without canvassing whether the worker's situation fell within the category of unusual circumstances referred to in the policy. She did not seek a medical opinion on this issue.
- (19) The worker had no prior history of an umbilical hernia. There was a specific work incident involving unusual strain from pulling on a rope to try and open a frozen trap door, in the course of which the worker noted his naval popped out. He reported this incident immediately to first aid and sought medical attention. His attending physician has provided an opinion supporting a causal relationship between this straining incident and the appearance of his hernia, and there is no contrary medical opinion.
- (20) Although pulling may be a typical bodily motion, I do not agree with the employer that pulling on a rope to release a trap door which is frozen shut falls within this category of activity so as to be non-compensable. I consider, on the specific facts of this case, that this incident appropriately falls within the category of "most unusual circumstances" set out in Manual policy #15.50. I am satisfied that there is sufficient evidence of a cause and effect relationship between the work incident and the umbilical hernia, given its appearance at the time of the unusual straining incident and the uncontradicted medical opinion supporting a causal relationship.
- (21) The employer's appeal is denied. I find that the worker's umbilical hernia arose out of and in the course of his employment.

Editors' Note: The names of the parties have been removed for privacy considerations. The text of the decision is otherwise unchanged.