



Electrical Workers at Risk for Developing a Hernia, or Aggravating a Pre-Existing Hernia - Understanding How WSIB Adjudicates Hernia Claims

By: Gary Majesky, *WSIB Consultant & Executive Board Member*



A frequent injury that electrical workers experience are hernias. Not all hernias are work related, but in my experience the vast majority of abdominal and groin hernias are the result of physically demanding work tasks.

In every hernia claim submitted to WSIB there must be a work related strain or trauma that causes the hernia in order for a claim to be allowed. In most stances members can recall when they felt a strain, and the emergence of an abnormal lump or burning sensation indicating a hernia.

Sometimes members have poor recollection of an injury, but visit their doctor for assessment who then diagnoses a hernia. If you submit a WSIB claim and cannot identify a specific strain (e.g., pushing, pulling or lifting), and tell WSIB that your hernia is work related because your job is physically demanding – WSIB will deny your claim. WSIB does not recognize hernia claims that are gradual onset injuries (repetitive strain injuries). There **MUST** be a precipitating mechanism of injury that can be identified.

Over the years I have represented members who developed a hernia after climbing a 50 ft. vertical ladder to an overhead crane (Redpath Sugar), or shoveling gravel for a trench to lay some PVC pipe.

There are also many members who were diagnosed with hernias but never had surgery and continued working. The pathogenesis of the original hernia may be unknown or not work related, but they engage in strenuous work which aggravates the pre-existing hernia, leading to emergency surgery.

Adjudicating Hernia Claims

Decision-makers may allow claims for work-related hernias if there is information on file confirming the diagnosis. A decision-maker may consult with WSIB clinical staff to assist in making this determination. In most instances, there isn't a dispute regarding the work performed by the member giving rise to a hernia, however, some employers muddy the waters and tell WSIB that there was no stress or effort involved in a wire pull. Typical arguments put forward in disputing workers hernia claims are the size of wire or a tugger was used.

A frequent source of adjudicative controversy is when members have a pre-existing hernia that is aggravated by work. If members aggravate a pre-existing hernia, and opt for elective surgery, WSIB does not allow the claim for health care or loss of earnings benefits.

Conversely, if a member requires *emergency surgery* because they suffered a work related aggravation of a pre-existing hernia, then the claim is allowable. That's what happened last year when a member working at the Honda plant for a 3-day shut-down aggravated a pre-existing hernia, was laid-off, then went to the hospital over the weekend where he was diagnosed with an incarcerating hernia that led to emergency surgery. Dr. Ian Soutter, General Surgeon at Southlake Health made the following observation in his consultation report:

This 35-year-old electrician was seen with an incarcerating umbilical hernia. He has had an umbilical hernia present for some time a year or 2 and it has been mildly symptomatic, but always easily reducible. He recently was doing quite a bit of heavy work, pulling a heavy cable and yesterday had very painful upper abdomen and umbilicus with a tender, non-reducible hernia. He came to the emergency department here where under sedation he did have reduction of the hernia. He was in quite a bit of pain and received quite a lot of morphine and other narcotics, but eventually he was comfortable enough to be discharged home. He apparently got home and was walking up the stairs when the hernia came out again and re-incarcerated and he ended up coming back to the emergency department last night, where again he was given ketamine and the hernia was reduced. He, again, apparently had quite a bit of pain after this and required quite a bit of narcotics and because of this, I was asked to see him in consultation.

Law and Policy

Hernia entitlement is currently adjudicated under Operational Policy Manual, or OPM 15-04-08, and states "If a specific work-related muscular effort or incident causes or aggravates a hernia, workers are entitled to benefits." The Policy states:

Initial health care

The WSIB pays initial health care benefits to workers if their work causes a hernia, or aggravates a pre-existing, work-related, or non-work-related, hernia.

Elective surgery

If a worker's pre-existing, non-work-related hernia is aggravated through work and the worker elects to have it repaired, decision-makers do not allow benefits for surgery and related lost time *unless* one of the entitlement criteria (described following) for emergency repair are met.



Emergency surgery

Decision-makers allow benefits for emergency surgery for both work-related and non-work related hernias aggravated by work if the hernia is:

- incarcerated (irreducible), or
- strangulated (incarceration with compromised blood supply), or
- associated with, or is apt to cause, rupture of the bowel wall.

In Tribunal *Decision 1411/08*, the Panel adjudicating a hernia claim under an earlier policy OPM 03-03-15, did not allow the appeal, because the worker's surgery was elective, not emergency, therefore, it did not meet the entitlement criteria for emergency repair. Although the policies are different, they have the same language regarding "emergency surgery."

There is settled case law on the question of what a significant contributing factor might be that was considered in Tribunal *Decision No. 280, 6 WCAT 27*, where the Panel concluded:

A "significant contributing factor" is a factor of considerable effect or importance or one which added to the worker's pre-existing condition in a material way to establish a causal connection.

The Panel also quoted with approval a passage from Tribunal's *Decision No. 652/87, 10 WCATR 75*:

This case raises the issue of the distinction between disabling symptoms appearing as the result of the impact of employment on a pre-existing degenerative condition which symptoms may be fairly taken as reflecting a compensable exacerbation or acceleration of a pre-existing condition, and the disabling symptoms appearing as a result of the impact of employment on a pre-existing degenerative condition which symptoms may be fairly taken as merely *evidence* of the disabling nature of the pre-existing condition.

Finally, there is settled jurisprudence in Tribunal case law regarding aggravation of pre-existing conditions, see *Decision No. 1592/01*, at para 21:

It is now commonplace in Tribunal case law that for entitlement to succeed on an aggravation basis, one must be satisfied that the work duties or a work incident changed the natural course of the underlying condition.

My advice to members and union representatives, work from the theory that there is a probable work related contribution when electrical workers develop a hernia, and don't be surprised when employers object.

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