



## Prior hernia not a legally recognized preexisting condition in Oregon

By Karen S. Varney ■ July 21, 2015

The Oregon Court of Appeals has found a claimant's prior hernia, which resulted in weakened abdominal wall tissues, did not qualify as a legally recognized preexisting condition when considering its contribution to a work related hernia.

In *Corkum v. Bi-Mart*,<sup>1</sup> Dennis Corkum had a hernia surgically repaired in 1995, but was diagnosed with another hernia in 2011 after lifting heavy merchandise at work. His employer conceded that the work incident was a material contributing cause of the claimant's condition, but asserted the latter injury had combined with the earlier hernia, which was the major contributing cause of the disability and need for treatment of the combined condition.

The appeals court determined the prior hernia-caused abdominal wall weakness was only a passive contributor and merely allowed the work related hernia to enlarge, while the stresses and strains of everyday life actively caused it to enlarge. The medical evidence did not demonstrate the abdominal wall weakness actively contributed damage to the area through which the hernia protruded. The appellate court remanded the case to the Board for reconsideration.

As this case demonstrates, when dealing with a preexisting condition such as a hernia or diabetes, it is critical to develop evidence demonstrating how the preexisting condition actually contributed to a work related injury rather than just making a worker more susceptible. The difference is often very subtle. In addition to carefully worded questions to doctors, follow-up clarification is often needed. The attorneys at Reinisch Wilson Weier are available to assist you with language specifically tailored to your case. ■



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<sup>1</sup> *Corkum v. Bi-Mart*, 271 Or. App. 411 (2015)