

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F609588**

**KAY A. OSBORN**

**CLAIMANT**

**HOT SPRING COUNTY  
(SELF-INSURED)**

**RESPONDENT EMPLOYER**

**ORDER AND OPINION FILED FEBRUARY 7, 2007**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant appeared PRO SE.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Hot Springs, Arkansas on January 12, 2007. A prehearing conference was held on November 28, 2006, and a prehearing order was filed the same date. A copy of the prehearing order was introduced as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an October 12, 2005, incident.
2. The compensation rate is \$20.

The claimant contends that she sustained a compensable hernia injury and injury to her jaw as a result of an incident on October 12, 2005, when she was working as a volunteer firefighter. The claimant contends she is entitled to medical benefits and temporary total disability benefits from October 13, 2005, to a date to be determined.

The claimant reserves the jaw injury issue.

Respondents contend the claimant did not sustain a compensable hernia and that she cannot meet the five requirements of the statute. The claim has been controverted in its entirety.

### **ISSUES TO BE LITIGATED**

1. Compensability of a hernia.
2. Medical benefits.
3. Temporary total disability benefits.

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 Ark. Code Ann. §11-9-704:

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. There was an October 12, 2005, incident.
2. The compensation rate is \$20.
3. The claimant has failed to prove by a preponderance of the evidence that she has satisfied the five requirements set out in Ark. Code Ann. §11-9-523 for a compensable hernia arising out of and in the course of her employment on October 12, 2005.

## DISCUSSION

The claimant, 47 years old, worked for three years as a certified firefighter and first responder before the October 12, 2005, incident. The claimant responded to a trailer fire about 6:00 p.m. Nine or ten people responded, as well, with two or three fire trucks. According to the claimant, she was told to grab one of the fire hoses with a hard rubber nozzle and the pressure was turned up too high. The claimant testified that the hose and pressure picked her up in the air and she fell down with the nozzle hitting her in the face. As the claimant was on the ground, the nozzle and water pressure were hitting her in the stomach above her belly button. A co-worker turned the water off and the claimant released the hose and sat under a tree for a short time. According to the claimant, her mouth was bleeding and she was black and blue. The claimant's supervisor, Chief David Ratcliffe, witnessed the incident and she told him she was hurt.

The claimant testified that she did not have insurance and first went to the doctor with her injury on July 27, 2006, and received x-rays. She was diagnosed with a hernia and was scheduled for surgery with Dr. Robert Breving. According to the claimant, David Ratcliffe told her to seek medical care at the emergency room.

Under cross examination, the claimant confirmed that the knot or bulge in her upper stomach appeared about one month after the incident. The claimant testified that she did not work outside the home at the time of the incident nor has she worked since.

The claimant contends she sustained a compensable hernia on October 12, 2005. Ark. Code Ann. §11-9-523 is the controlling statute for this type of injury. Basically, five elements have to be proven for a compensable hernia. Those elements

are as follows:

- (1) That the occurrence of the hernia immediately followed as the 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.

In the present case, the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable hernia arising out of and in the course of her employment. The claimant testified about the fire hose hitting her in the stomach on October 12, 2005; however, the first requirement of the hernia statute is that the occurrence of the hernia must immediately follow the result of a sudden effort or strain, or application of force to the abdominal wall. The claimant testified at the hearing that the bulge or knot in her stomach did not appear until one month after the incident. Therefore, the first element of the hernia statute has not been met. The claimant did testify that she had severe pain from the fire hose hitting her and that she did cease working for a period and also that the fire chief witnessed the fire hose incident. The claimant did not seek medical attention until July 27, 2006, following the October 12, 2005, incident. Dr. Breving wrote on January 5, 2007, "Ms. Osborn was injured while on the job as a firefighter last year. Her injury was such that she should have been seen by a physician w/i 72 hours." (Cl. Exh. No. 1, p. 3.) The claimant did not actually see Dr. Breving until July 27, 2006 and his January 5, 2007, letter would have to be

information he elicited from the claimant and not from his personal knowledge, since his first contact with the claimant was some nine months after the fire hose incident.

The preponderance of evidence provides the claimant did not meet the first and fifth requirements of Ark. Code Ann. §11-9-523.

**ORDER**

The claimant has failed to prove by a preponderance of the evidence that she has satisfied the five requirements set out in Ark. Code Ann. §11-9-523 for a compensable hernia arising out of and in the course of her employment on October 12, 2005. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**