

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

CAP

BLANCA GOMEZ,

Applicant,

vs.

U.S. CARE HEALTH & MANAGEMENT, INC.;
ENSTAR U.S., INC., dba ENSTAR, administrators
for SEABRIGHT INSURANCE COMPANY,

Defendants.

Case No. ADJ9116544

FINDINGS AND ORDER

- JCR Law Group, Inc., by Marialouisa N. Lizarraga, hearing representative for Applicant
- Law Offices of Bradford & Barthel LLP, by Claudia Peterson, attorney for Defendants

The above entitled matter having been heard and regularly submitted, the Honorable Patricia Frisch, Workers' Compensation Judge, now finds as follows:

FINDINGS OF FACT

1. BLANCA GOMEZ born on 08-02-1955 while employed during the period 09-18-2012 through 09-18-2013 as a certified nursing assistant, occupational group number 340, at Long Beach, California by US CARE HEALTH & MANAGEMENT, did not sustain injury arising out of and occurring in the course of employment to her legs, teeth, abdomen, arms, shoulders, back or bilateral wrists.

2. Applicant may have sustained injury as a hernia but the claim is barred by the statute of limitations.

3. At the time of the alleged injury the employer's workers' compensation carrier was ENSTAR dba ENSTAR ADMINISTRATORS for SEABRIGHT INSURANCE

COMPANY from 1-1-13 to 9-18-13; Farmers, who entered into a Compromise and Release with the applicant had 29% of the continuous trauma.

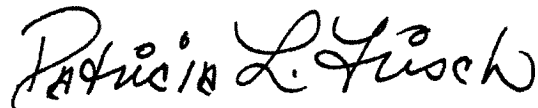
4. The Employment Development Department takes nothing because of the statute of limitation on the hernia and the non-industrial aspect of the other body parts.

5. There is no potential permanent disability from which to pay any attorney fees.

ORDER

IT IS ORDERED that Applicant take nothing further from Defendant herein.

DATE: March 7, 2017

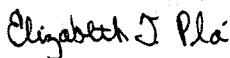


Patricia Frisch
WORKERS' COMPENSATION JUDGE

Service:

BLANCA GOMEZ	Injured Worker, PO BOX 2717 COSTA MESA CA 92628
BRADFORD BARTHEL ANAHEIM	Law Firm, 222 S HARBOR BLVD STE 1000 ANAHEIM CA 92805, E- DOCS@BRADFORDBARTHEL.COM
EDD SDI SANTA ANA	Lien Claimant, PO BOX 1466 SANTA ANA CA 92702, DI.EAMS219@EDD.CA.GOV
ENSTAR US ORANGE	Claims Administrator, PO BOX 11027 ORANGE CA 92856
JCR LAW GROUP GLENDALE	Law Firm, 427 W COLORADO ST STE 106 GLENDALE CA 91204, JONATHANCROSEN@GMAIL.COM

On: 3/7/2017

By: 
Elizabeth T. Pla

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

CAJ

CASE NUMBER: ADJ9116544

BLANCA GOMEZ

-vs.-

US HEALTHCARE
MANAGEMENT, INC.;
ENSTAR U.S., INC., dba
ENSTAR, administrators for
SEABRIGHT INSURANCE
COMPANY,

WORKERS' COMPENSATION JUDGE: PATRICIA L. FRISCH

DATE: March 7, 2017

OPINION ON DECISION

Blanca Gomez, born August 2, 1955, while employed during the period 9-18-12 to 9-18-13 as a certified nursing assistant, occupation group number 340 at Long Beach, California by U.S. Care Health & Management, did not sustain injury arising out of or in the course of employment to her legs, teeth, abdomen, arms, shoulders, back or bilateral wrists. She may have sustained injury as a hernia but she knew about it and knew it was caused by work in 2010; the claim is barred by the statute of limitations.

At the time of the alleged injury the employer's workers' compensation carrier was Enstar dba Enstar administrators for Seabright Insurance Company from 1-1-13 to 9-18-13.

Farmers, who entered into a Compromise and Release with the applicant, had 29% of the continuous trauma.

The issues presented at trial on 2-16-17 were: AOE/COE, parts of body injured, EDD, post term filing and statute of limitations.

AOE/COE / PARTS OF BODY INJURED

The court had a hard time sifting through the applicant medicals. The doctors seem confused between the specifics that were suffered by the applicant and her continuous trauma claim.

There was much discussion about her eyes and teeth which, according to the testimony and the medicals, were clearly specific injuries not subject to this trial.

Sleep was not plead but the court was tasked to read Dr. Tribble (Exhibit 7) who in his 4-14-14 report on page 3 states she "...has never been married." The very next statement is " She reported her current marriage to be in good standing."

Dr. Hadjian, 3-31-14, Exhibit 3, page 2 states she reported the injuries and received treatment.

Dr. DeCarlo, her PTP 5-28-15 P&S report on page 3 (Exhibit 4), states, the applicant knew of her hernias in 2010 and knew they were related to her job duties, she even saw a doctor in 2011 or 2012 that told her she had hernias and never reported it for fear of losing her job.

Further down that page she denied reporting other injuries for fear of losing her job.

The PQME notes that she worked until the day she was terminated and he found it difficult to believe, with her alleged injuries, how she could do her regular job duties.

Finally, the court agrees with the PQME that the applicant is a poor historian. On page 5 line 23, of the SOE/MOH the applicant states that she told Marlene and Steve about her hernias.

Then on page 7, lines 4-5, she states she didn't report the injuries for fear of losing her job.

The records and the testimony are not credible; the only report of substantial evidence is the PQME report and the court chooses to follow that report.

STATUTE OF LIMITATIONS

Clearly, from not only the medicals, but also the testimony, the applicant knew of the hernia and knew it was work related and even when it got worse she did not report it after a doctor confirmed it. The Statute of Limitation had run by the time the applicant, after termination, claimed the hernias.

POST TERM FILING

The injury pled was a continuous trauma; post term reporting was not considered in this decision.

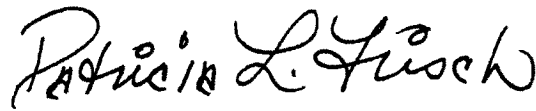
EDD

EDD takes nothing because of the statute of limitation on the hernias and the non-industrial aspects of the other body parts.

ATTORNEY FEES

There is no potential permanent disability from which to pay any attorney fee.

DATE: March 7, 2017



Patricia Frisch
WORKERS' COMPENSATION JUDGE

Service:

BLANCA GOMEZ, US Mail
BRADFORD BARTHEL ANAHEIM, Email
EDD SDI SANTA ANA, Email
FARMERS SANTA ANA, US Mail
JCR LAW GROUP GLENDALE, US Mail

On: 3/7/17

BY:


E.T. Pla