

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F213345

MARIAN COX	CLAIMANT
AIRE SYSTEMS DIVISION	RESPONDENT
TRAVELERS INS. CO. INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 9, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL HAMBY, Attorney, Greenwood, Arkansas.

Respondents represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on April 17, 2003, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on February 10, 2003. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. From July 20, 2000, to February 13, 2001, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her low back on September 18, 2000.

4. Medical expenses have been paid to December 15, 2000.

5. The claimant is entitled to a weekly compensation rate of \$213.00 for temporary total disability and \$160.00 for permanent partial disability.

6. No additional benefits have been paid to the claimant by the respondent from December 15, 2000.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional medical.
2. Is this claim barred by the statute of limitations.
3. Attorney's fees.

In regard to the foregoing issues the claimant contends that she is entitled to further reasonable and necessary medical treatment and a statutory attorney fee. The claimant's attorney is not contending that he is entitled to a fee on the benefits paid by the respondent up to December 15, 2000.

In regard to the foregoing issues the respondents contend that the claimant is not entitled to additional compensation benefits for the low back injury of September 18, 2000. Without waiving other defenses, the respondents affirmatively plead that the claimant's claim is barred by the applicable statute of limitations.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1 and Claimant's Exhibit No. 2. The respondents

submitted medical exhibits marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified and it has been stipulated by the parties that she sustained a compensable injury while working for the respondent on September 18, 2000. The claimant testified that this accident was reported and she was sent to see Dr. Holder. The claimant testified that Dr. Holder put her on light duty and gave her medications in the form of muscle relaxers and pain killers. The claimant testified that she continued to be seen by Dr. Holder and he then referred her to Dr. Floyd, a chiropractor. The claimant testified that she remembered that on October 18, 2000, Dr. Floyd found that she had reached maximum medical improvement and returned her to work without restrictions. The claimant testified that the last time she was seen by Dr. Holder was on December 15, 2000, and he released her without restrictions. The claimant testified that she continued to be seen by Dr. Floyd understanding that her workers' compensation insurance was not going to pay for anything subsequent to December 15, 2000.

The claimant testified that she made arrangements to be seen by Dr. Standefer, a neurosurgeon, but each time her appointments were cancelled. The claimant testified that she then went on her own to see Dr. Short and that, at his recommendation, she underwent an MRI. The claimant agreed that after she was seen by Dr. Short and had her MRI, she contacted her present attorney in November 2002 to file for additional benefits. The claimant testified that currently she is

scheduled to undergo epidural steroid injections on July 22 at the direction of Dr. Livingston.

The claimant testified that she sustained a back injury while working for Riverside and had chiropractic care from 1998 through April 15, 2000, for this problem at the Sutherland Chiropractic Clinic. The claimant testified that this injury was to her muscles on her right side down into her rib cage and her upper buttock. The claimant agreed that this particular injury seemed to have resolved itself before she was hurt while working for the respondent. The claimant agreed that she terminated her chiropractic treatment in April 2000 and her back seemed fine until September 18, 2000.

The claimant testified that she has missed some days from work but primarily has been able to continue to work since September 18, 2000. The claimant testified that she voluntarily terminated her employment with the respondent.

On cross examination, the claimant agreed that she sustained an injury while working for Riverside Furniture in 1998 for which she received chiropractic treatment up through April 15, 2000. The claimant testified that she began work for the respondent in July 2000 some three months after her last chiropractic treatment for her prior back problem. The claimant testified that after she began working for the respondent she injured her back prior to the September 18 date for which she returned to the chiropractor for treatment but she did not report this as a work related injury. The claimant agreed that after her September 18, 2000, injury she was treated by Dr. Holder who then referred her to Dr. Floyd. The

claimant further agreed that following the October 2000 MRI, Dr. Holder recommended that she discontinue treatment with Dr. Floyd. The claimant agreed that on October 18, 2000, she signed a form indicating that she understood that the respondent and their workers' compensation carrier was not going to furnish her any further chiropractic care for her September injury. The claimant further agreed that she understood that after she was seen by Dr. Holder in December that the respondent and their insurance carrier were not going to furnish her with any further evaluation or treatment from that point on. The claimant agreed that when she was seen by the chiropractor on January 19, 2001, this would be at her own expense and that the next time she was seen by a chiropractor or medical provider was on January 29, 2002. The claimant acknowledged that she went for over a year with no chiropractic treatment or medical evaluation for her back complaints. The claimant again agreed that when she returned to the chiropractor in January 2002 it was with the understanding that she knew that the respondent would not be responsible for these bills. The claimant testified that she filed a claim for additional benefits in November 2002.

The medical records set forth that the claimant was seen at Cooper Clinic on September 18, 2000, following an injury at work. The claimant was diagnosed with right SI joint dysfunction/lumbar strain, medications and physical therapy were prescribed. The claimant continued to be treated by Dr. Holder for what was diagnosed as lumbar strain and Dr. Holder referred the claimant to the Sutherland Chiropractic Clinic where she was seen by Dr. Floyd

and treated for her back problems. The claimant underwent a nerve conduction study on November 1, 2000, which Dr. Janice Keatin found to be within normal limits. Dr. Joseph Queeney reviewed the claimant's October 5, 2000, MRI noting that this study does show very minimal disc protrusions off to the left side at L3-5, diffusely at L4-5 and diffusely at L5-S1 and these images show no evidence of any nerve root compression. Dr. Queeney writes that he does not think there is any surgical significant lesions. Dr. Queeney diagnosed the claimant with lumbar strain and writes that he discussed with her that her problem is primarily myofascial in nature. The claimant was released by Dr. Holder on December 15, 2000, without restrictions. The claimant was seen by the chiropractor on January 19, 2001, and the chiropractor remarks that the claimant has responded favorably to conservative chiropractic management. The claimant was next seen for treatment of neck pain, mid back pain and low back pain on January 28, 2002.

The medical records set forth that the claimant began receiving medical treatment as a result of a motor vehicle accident on February 19, 2002, to her neck area that radiates to her shoulder and left arm. The medical records subsequent to this date primarily deal with her cervical problems but does include treatment for her lumbar spine as well.

Ark. Code Ann. §11-9-702(b) sets forth that in cases where any compensation, including disability or medical, has been paid on account of an injury, a claim for additional compensation shall be barred unless filed with the Commission within one year from the

date of the last payment of compensation or two years from the date of the injury, whichever is greater. The claimant sustained her compensable injury on September 18, 2000, as stipulated by the parties. The claimant filed her claim for additional benefits on November 22, 2002. This filing for additional benefits claim was clearly outside of two years from the date of her compensable injury. The claimant has testified that the respondent last paid for medical treatment for her compensable injury on December 15, 2000. The claimant has testified that she received chiropractic care on January 19, 2001, but testified that she understood that this treatment was not accepted nor would be paid by the respondent. The claimant was next seen for chiropractic treatment for her neck, mid back and low back on January 28, 2002. From December 15, 2000, which is the date the claimant last received authorized medical treatment from the respondent until she filed her claim for additional benefits on November 22, 2002, there is much more than a one year lapse. The code clearly sets forth that a claim will be barred unless filed with the Commission within one year from the date of last payment of compensation or two years from the date of the injury which ever is greater. Based on Arkansas law this claim is barred by the statute of limitations.

#### FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. From July 20, 2000, to February 13, 2001, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her low back on September 18, 2000.

4. Medical expenses have been paid to December 15, 2000.

5. The claimant is entitled to a weekly compensation rate of \$213.00 for temporary total disability and \$160.00 for permanent partial disability.

6. No additional benefits have been paid to the claimant by the respondent from December 15, 2000.

7. This claim is barred by the statute of limitations. The claimant filed her claim for additional benefits on November 22, 2002, for her compensable injury of September 18, 2000, which is more than a two year span of time. The claimant's claim for additional benefits, filed on November 22, 2002, is more than one year from the date she last received authorized medical treatment from the respondent which was on December 15, 2000. Ark. Code Ann. §11-9-702 bars claims for additional benefits which are not filed with the Commission within one year from the date of the last payment of compensation or two years from the date of the injury, which ever is greater.

ORDER

This claim is barred by the statute of limitations. Therefore, this claim for additional benefits is denied in its entirety.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE