

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E909360

| | |
|--|------------|
| TERRY JONES | CLAIMANT |
| WASHINGTON REGIONAL MEDICAL | RESPONDENT |
| CANNON COCHRAN MANAGEMENT INSURANCE CARRIER | RESPONDENT |

OPINION FILED AUGUST 4, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by DAVID BRENT STERLING, Attorney, Fayetteville, Arkansas.

Respondents represented by TOD BASSETT, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

There was a pre-hearing conference held on December 10, 2002, and at that time the parties agreed that no hearing was necessary. It was further agreed that this matter would be submitted on agreed upon stipulations, documentary evidence and briefs. The parties have stipulated that;

1. The Full Commission opinion rendered on May 17, 2001, is res judicata and the law of the case.

The parties agreed that the issues to be tried at this time are;

1. Whether the statute of limitations bars this claim for benefits.

2. Controversion.

3. Attorney's fees.

In regard to the foregoing issues the claimant contends that the statute of limitations had not run on her claim and that she is

entitled to continuing reasonable and necessary medical care and treatment by or at the request of her treating neurosurgeon, Dr. Luke Knox. Ark. Code Ann. §11-9-702(b) indicates that the time for filing additional compensation in cases where any compensation, including disability or medical, has been paid on account of injury, shall 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, whichever is greater. In the present case, the respondents did not timely pay the awarded medical benefits, temporary total disability benefits or attorney fees. The claimant, therefore, filed a request for a hearing on the respondent's failure to timely pay disability benefits, medical benefits and the attorney's fee plus interest and penalties by letter dated September 27, 2001, to Administrative Law Judge Elizabeth Danielson. Following this request for a hearing on the issue of payment of compensation and benefits, respondent tendered payment by letter dated October 8, 2001, from respondents' counsel. Enclosed with this letter and the checks was an October 1, 2001, letter from respondents' adjuster, John Moore, setting out benefits being paid. Therefore, the claimant contends the time for filing additional compensation pursuant to Ark. Code Ann. §11-9-702(b) would be one year from the date of last payment of compensation (October 8, 2002). The claimant subsequently returned to her primary treating physician, Dr. Like Knox, on June 19, 2002. Dr. Knox ordered additional diagnostic testing and has scheduled the claimant for a lumbar fusion. The claimant's return appointment

with Dr. Knox on June 19, 2002, was within one year from the date of her last payment of compensation. Additionally, claimant's counsel's filing of a claim by letter dated September 27, 2001, would have tolled the statute of limitation as a request for payment of compensation. The claimant also filed a claim for additional compensation benefits by letter dated September 25, 2002, which was faxed to the Arkansas Workers' Compensation Commission and copied to respondents' counsel. This claim for additional compensation was filed before one year had run either from the filing of the claim for payment of compensation on September 27, 2001, or payment of disability and medical benefits by the respondent on October 8, 2001. It should also be noted that the claimant had submitted an impairment rating from Dr. Luke Knox to the respondents and that impairment rating had been controverted by respondents by letter dated December 18, 2001, from respondents' counsel. Clarification reports had been requested from Dr. Luke Knox in regards to the impairment rating at the request of respondents' counsel and were being submitted through April 2002. A hearing was not requested by claimant on the issue of the anatomical impairment because of her subsequent need for fusion surgery making the impairment rating premature at this time. Therefore, the claimant contends that the statute of limitations has not run and that she returned to her treating physician within the requisite time frame and she should be entitled to continued reasonable and necessary medical care and treatment by Dr. Luke Knox.

In regard to the foregoing issues the respondents contend that the statute of limitations has run on the claimant's claim, and thus, she is now barred from receiving any additional benefits as a matter of law. Respondents rely upon Ark. Code Ann. §11-9-702(b) which states that "in cases where any compensation, including disability or medical, has been paid on account of injury, the 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." In this particular case, the legal question for the Commission to determine is whether or not the claimant filed a claim for additional compensation with the Commission within one year from the date of the last payment of compensation. A hearing was held in the case to determine the issue of compensability and the claimant's entitlement to various initial benefits on June 20, 2000. On September 6, 2000, the Administrative Law Judge ruled in the claimant's favor on compensability and awarded reasonable and necessary medical expenses and temporary total disability benefits. Respondents appealed the Administrative Law Judge's opinion and the Full Commission subsequently affirmed it on May 17, 2001. Respondents did not appeal the Full Commission's opinion to the Arkansas Court of Appeals. Respondents contend that the date of the Full Commission's opinion controls with respect to the starting point for the running of the statute of limitations. In other words, that was the day that the medical and indemnity benefits were incurred. The actual physical date of payment does not

control with respect to the starting point for the running of the statute of limitations. The claimant did not return back to see her primary treating physician, Dr. Like Knox, again until June 19, 2002, over a year after the Full Commission's sustaining opinion and order was entered of record. The claimant did not file her Form AR-C with the Commission claiming entitlement to additional benefits until September 25, 2002, which, once again, was in excess of a year from the date of the Full Commission's opinion and order. As such, the statute of limitations has run on the claim as a matter of law. The above constitutes the relevant factors for the Commission to consider in arriving at its final decision on the statute of limitations issue. What is not relevant to the issue is the claimant's allegation that the statute was somehow tolled by virtue of a letter from claimant's counsel to the Administrative Law Judge on September 27, 2001, requesting a hearing on the sole issue of enforcing the awarded medical and TTD benefits to the claimant under the Full Commission's May 17, 2001, opinion and order. That in no way constituted a claim for new or additional benefits and has no effect whatsoever on the statute of limitations issue. For explanatory purposes only, the respondents' payment of the claimant's awarded benefits was delayed by virtue of the fact that the subject medical had all previously been paid under the claimant's group health coverage and the various treating providers took an inordinate amount of time to submit new bills under the proper coded format so that they could then be precessed and paid under the fee schedule. It should also be pointed out that the

claimant's benefits were paid shortly thereafter and that no hearing to enforce the Full Commission's order ever took place. Once again, that whole scenario is a "red herring" and has absolutely no application to the statute of limitations issue. Finally, the fact that Dr. Luke Knox previously rated the claimant for permanent impairment also has no impact or relevance on the statute of limitations issue. The fact that the attorneys for both parties wrote Dr. Knox soliciting his opinion on the issue has no bearing whatsoever on the statute of limitations issue. The truth of the matter is that respondents advised claimant in writing on December 18, 2001, that they controverted the permanency issue and would not be honoring the benefit. Consequently, as of December 18, 2001, the claimant was on notice of the respondents' position on the issue and the claimant could have moved forward on the matter at any point thereafter had she chose to do so. The claimant never did so and the fact that the permanency issue is "still out there", so to speak, has no relevance whatsoever to the statute of limitations issue. Due to all the above, respondents contend that the statute of limitations has run in the case and that the claimant's request for additional benefits is barred as a matter of law.

The documentary evidence agreed to and submitted in this matter consists of 28 pages and is marked Joint Exhibit No. 1.

DISCUSSION

It has been stipulated by the parties that the Full Commission affirmed the administrative law judge's opinion granting benefits to the claimant on May 17, 2001. It is further agreed that this opinion was not appealed and is now res judicata and the law of the case. By letter dated September 27, 2001, the claimant's attorney requested a hearing on the respondents' failure to timely pay benefits which had been awarded plus interest and penalties since it was more than thirty days since the Full Commission's opinion of May 17, 2001, had become final. By letter dated October 1, 2001, the respondent's carrier's account manager, John D. Moore, in a letter to the respondent's attorney sets forth the amounts to be paid to the claimant as well as the claimant's attorney in satisfaction of the Full Commission's opinion of May 17, 2001. This same letter sets forth the amount of penalty and interest which the claimant and his attorney will receive as a result of these late payments. Payment was made to the claimant on October 2, 2001, for benefits owing as well as penalty and interest. In a letter from the respondents' attorney dated October 8, 2001, to the claimant's attorney, it is indicated that payment has been made to the claimant for her benefits as well as penalty and interest and a check has been forwarded to the claimant's attorney but an additional check for the 10 percent interest was forthcoming to the claimant's attorney.

Dr. Luke Knox writes on June 19, 2002, to the claimant's attorney that he has seen the claimant that day. Dr. Knox notes

that after reviewing the claimant's recent MRI, additional surgery was recommended for the claimant's compensable injury. By letter dated September 24, 2002, the respondent notified the claimant that they were denying any additional benefits to which she contends she is entitled. The claimant signed an AR-C on September 25, 2002, requesting additional benefits. This AR-C was filed with the Commission on September 30, 2002.

Ark. Code Ann. §11-9-702(b)(1) sets forth the statute of limitations for filing additional compensation. This statute states as follows;

(1) In cases where any compensation, including disability or medical, has been paid on account of injury, the claim for additional compensation shall be barred unless filed with the Commission within (1) year from the date of the last payment of compensation or (2) years from the date of injury, whichever is greater.

In this matter the payment of last compensation to the claimant was on or about October 2, 2001. In fact, it could be argued that, in fact, the last payment of benefits for this claimant since they went to the claimant's attorney in the form of interest was paid by the respondent on or about October 9, 2001. The claimant filed her AR-C requesting additional benefits with the Commission on September 30, 2002. The claimant's filing for additional benefits was in the one year period of time from the receipt of last payment of compensation, therefore, her claim is not barred by the statute of limitations. See Jones Furniture Manufacturing Co. v. Evans, 244 Ark. 242, 424 S.W. 2d 880 (1968) and Myles v. Paragould School District, 28 Ark. App. 81, 770 S.W. 2d 675 (1989).

The respondents have controverted this claimant's claim for additional benefits, therefore, the treatment which she has received from Dr. Knox in 2002 as well as the recommended surgery and any temporary total disability which she would experience following that surgery would be considered controverted and an attorney's fee is due under the old fee schedule.

FINDINGS & CONCLUSIONS

1. The Full Commission opinion rendered on May 17, 2001, is res judicata and the law of the case.

2. This claimant's request for additional benefits is not barred by the statute of limitations. See discussion above.

3. The respondents have controverted this claimant's request for additional benefits in the form of additional medical, additional temporary total disability, additional permanent partial disability and attorney's fees.

4. The claimant's attorney is entitled to the statutory maximum on the benefits awarded herein.

ORDER

Based on the evidence, this claim for additional benefits is not barred by the statute of limitations.

The respondents should pay for additional medical treatment for the benefit of this claimant as well as any temporary total disability which she might experience as a result of her recommended surgery.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded

herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE