

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F003562

WANDA DIANE MUNN, EMPLOYEE	CLAIMANT
MAGNOLIA HOSPITAL, EMPLOYER	RESPONDENT
RECIPROCAL OF AMERICA, CARRIER	RESPONDENT

OPINION FILED OCTOBER 24, 2003

Hearing before Administrative Law Judge J. Mark White on September 25, 2003, in El Dorado, Union County, Arkansas.

Claimant represented by Mr. F. Mattison Thomas, III, Attorney at Law, El Dorado, Arkansas.

Respondents represented by Mr. Michael Dennis, Attorney at Law, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

On September 25, 2003, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A pre-hearing conference was conducted on August 4, 2003, and a Prehearing Conference Order was entered on that same date. A copy of the August 4, 2003, Prehearing Conference Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions were properly set forth in the Prehearing Conference Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/employer relationship

existed between the parties on February 17, 2000; that The Reciprocal of America is in liquidation and the claim is currently administered by the Arkansas Department of Insurance Guaranty Fund; that the claimant sustained a compensable injury on February 17, 2000; and that she earned an average weekly wage of \$364.00, entitling her to a compensation rate of \$243 per week for temporary total disability benefits.

The parties agreed that the issues to be presented were whether the claimant is entitled to additional medical and temporary total disability benefits; whether the claimant's claim for additional benefits is barred by the statute of limitations; and controversion and attorney's fees.

The claimant contends that she is entitled to additional temporary total disability benefits and medical benefits, and she reserves the right to claim entitlement to additional benefits.

The respondents contend that the last payment of benefits made on this claim was made in November of 2000; that the claimant filed an AR-C for additional benefits on or about August 28, 2002; and that the claim for additional benefits has occurred more than two years after the date of the injury and more than one year after the last payment of benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 claimant and to observe her demeanor, the following findings of fact and conclusions of law are hereby made in accordance with ARK.

CODE ANN. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. A preponderance of the evidence shows that no compensation was paid between November 30, 2000, and March 1, 2002.
4. A preponderance of the evidence shows that the statute of limitations on this claim ran on February 17, 2002, as no additional medical treatment or other compensation had been furnished in the year prior.
5. A preponderance of the evidence shows that the claimant filed her claim via Form AR-C on or after August 26, 2002, more than six months after the statute of limitations ran on her claim.
6. The claimant has failed to prove by a preponderance of the evidence that her

claim was timely filed.

7. This claim is therefore barred by the statute of limitations.

DISCUSSION

I. History

The claimant sustained a compensable injury to her back on February 17, 2000, in the course and scope of her employment as a licensed practical nurse for the respondent-employer. The respondents accepted the injury as compensable and paid appropriate benefits.

The claimant treated with her personal physician, Dr. Patrick Antoon, with the respondents' authorization. Dr. Antoon treated the claimant's back and leg pain with medication, a TENS unit, and several epidural steroid injections. The respondents eventually sent the claimant to Dr. Bruce Safman in Little Rock, who released the claimant to full-duty work on November 9, 2000, and released her from care on November 30, 2000.

Multiple MRI scans revealed a disc protrusion at L5-S1, which Dr. Safman opined to be "degenerative" in nature. Notably, a pre-accident MRI likewise revealed bulging at L5-S1. The results of a May 23, 2000, nerve conduction study were normal.

The claimant testified that the weakness in her legs brought on by her injury has caused her to fall literally dozens of times. She testified that her symptoms and pain continued after her release by Dr. Safman, and that she was unable to return to work. She testified that she returned to Dr. Antoon for treatment, though she failed to specify when she did so. The medical reports submitted by the claimant establish that she returned to Dr. Antoon in the fall of 2002 for more epidural steroid injections. The claimant testified at one point that her indemnity benefits resumed when she was unable to return to work, but at three other points she testified that all her benefits ceased with her failed attempt to return to work.

Nothing in the claimant's testimony or in the documentary evidence shows that the claimant sought or received medical treatment, other than prescription medicine refills, between her release by Dr. Safman in November, 2000, and her return to Dr. Antoon in the fall of 2002. The claimant made a claim for additional compensation via a Commission Form AR-C, dated August 26, 2002, culminating in this hearing.

The claimant resigned her position with the respondent-employer in June, 2002. She thereafter took a job as a nurse with Meadowbrook Lodge Nursing Home. In April, 2003, she sustained a fall on the job at Meadowbrook, exacerbating her symptoms. That fall is the subject of a separate workers' compensation claim,

identified by the claimant as WCC Claim No. F306433, and is not considered herein.

II. Statute of Limitations

Arkansas law limits the time in which a claim for additional compensation may be filed. The relevant statute of limitations states in pertinent part:

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

ARK. CODE ANN. § 11-9-702 (b)(1). The furnishing of medical services constitutes “payment of compensation” within the terms of the statute, and the one-year limitation begins to run on the date of the last furnishing of medical services. *Plante v. Tyson Food, Inc.*, 319 Ark. 126, 890 S.W.2d 253 (1994). A timely-filed claim for additional benefits will toll the statute of limitations until the claim is decided. *Bledsoe v. Georgia-Pacific Corp.*, 12 Ark. App. 293, 675 S.W.2d 849 (1984). It is the burden of the claimant, not respondents, to prove that a claim for additional compensation has been timely filed. *Aluminum Comp. Of America v. Rollon*, 76 Ark. App. 240, 64 S.W.3d 756 (2001).

The respondents contend that their last payment of benefits was made in November, 2000. The respondent-carrier filed a Form AR-4 with the Commission

on July 13, 2001, closing the file. The certification at the bottom of the form recites that a copy was provided to the claimant, and the respondents submitted a copy of an unsigned cover letter, dated July 13, 2001, providing the form to the claimant.

The last medical treatment documented in the record for the year 2000 was a visit with Dr. Bruce Safman on November 30, 2000. The record contains no evidence that the claimant visited with any other physician or otherwise received medical treatment or other compensation in 2001, or in January or February of 2002. I therefore find by a preponderance of the evidence that no compensation was paid between November 30, 2000, and March 1, 2002. A claim for additional benefits is time-barred unless it is filed within two years of the original injury, or within one year of the last payment of compensation, whichever is greater. ARK. CODE ANN. § 11-9-702 (b)(1). Two years from the date of the claimant's original injury would be February 17, 2002, and one year from the visit with Dr. Safman would be November 30, 2001. Therefore, I find by a preponderance of the evidence that the statute of limitations on this claim ran on February 17, 2002, the greater of these two dates.

The AR-C claim for benefits filed by the claimant is dated August 26, 2002. The claimant has offered no evidence to dispute the date recorded on her Form AR-C, and thus I find that it was indeed filed on or after that date, more than six months after the statute of limitations ran on her claim. The claimant has failed to

prove by a preponderance of the evidence that her claim was timely filed. Therefore, I find that this claim is barred by the statute of limitations.

I note that the claimant subsequently received treatment from her authorized physician, Dr. Patrick Antoon, beginning on August 15, 2002. Arguably, such treatment could in the abstract constitute the “furnishing of medical services” sufficient to toll the statute, regardless of whether the respondents paid for it or were even aware of it. *See, e.g., Plante v. Tyson Food, Inc.*, 319 Ark. 126, 890 S.W.2d 253 (1994). However, this subsequent treatment by Dr. Antoon was provided well after the statute of limitations ran. No claim can be revived by the provision of additional treatment once the statute has run. *See, Evans v. Northwest Tire Serv.*, 23 Ark. App. 11, 740 S.W.2d 151 (1987), *aff’d on other grounds, Northwest Tire Serv. v. Evans*, 295 Ark. 246, 748 S.W.2d 134 (1988). Thus, the treatment provided by Dr. Antoon in late 2002 cannot toll the statute of limitations.

I further note the claimant’s testimony that she continued to refill her medications after the cessation of her treatment with Dr. Safman. The statute is clear, however, that the furnishing of medicine alone will not toll the statute of limitations. ARK. CODE ANN. § 11-9-702 (b)(2). Thus, even if the respondents had furnished the claimant with replacement medicine throughout 2001 and 2002, a finding which I do not make, such provision would not toll the statute of limitations.

ORDER

The claimant has failed to prove by a preponderance of the evidence that this claim was timely filed. I must find that this claim is barred by the statute of limitations. Therefore, this claim for benefits is hereby denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge