

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. E705597

MICHAELIN J. RICHMOND, Employee CLAIMANT

DOLLAR GENERAL CORPORATION, Self-Insured Employer RESPONDENT

OPINION FILED SEPTEMBER 23, 2003

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by J. SHAWN SPENCER, Attorney, Fort Smith, Arkansas.

Respondents represented by BETTY J. DEMORY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

This case comes on for review on stipulations, documentary evidence, and briefs submitted by the parties.

A pre-hearing conference was conducted with the parties on June 5, 2002, at which time they agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The claimant sustained a compensable injury to her knee on January 31, 1997.
3. The claimant was earning an average weekly wage of \$175.00 which would entitle her to compensation at the rate of \$117.00 per week for total disability benefits.

In addition, the parties also agreed that the following issues were to be litigated at a hearing:

1. Statute of limitations.
2. Additional medical treatment.
3. Temporary total disability benefits.
4. Attorney fee.

Consequently, a hearing was set first for July 29, 2002, and then again on August 23, 2003. Prior to the scheduled hearing the parties agreed to submit this case for

consideration on the issue of statute of limitations only based upon stipulations, documentary evidence, and briefs submitted by the parties. The evidence which has been considered in this case has been blue-backed, with the exception of claimant's deposition which has been retained in the Commission file.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The claimant sustained a compensable injury to her knee on January 31, 1997.
3. The claimant was earning an average weekly wage of \$175.00 which would entitle her to compensation at the rate of \$117.00 per week for total disability benefits.
4. Claimant's claim for additional compensation benefits is not barred by the statute of limitations.

FACTUAL BACKGROUND

The claimant is a 40-year-old woman who was working for the respondent as an assistant manager when she suffered a compensable injury to her right knee on January 31, 1997. After her injury the claimant was initially treated by Drs. Brackman and Thompson who gave claimant pain medications and a leg brace. Claimant subsequently came under the care of Dr. Stephen Heim who diagnosed claimant as suffering from a meniscus tear and performed a surgical procedure on August 25, 1997. Dr. Heim's medical reports reflect that claimant had a good recovery from that surgery. However, Dr. Heim's medical report of September 15, 1998, reflects that claimant sought additional

medical treatment complaining of additional knee problems after twisting her knee while unloading a truck. Dr. Heim believed that a tear was present and a second surgical procedure was performed on September 21, 1998. Liability for these medical procedures was accepted by respondent as a compensable consequence of claimant's original knee injury.

In a report dated December 1, 1998, Dr. Heim indicated that he would release the claimant to return on an as-needed basis. Claimant next returned to Dr. Heim complaining of additional knee pain on November 2, 1999. Dr. Heim prescribed claimant additional medication and indicated that she should return for another evaluation in six weeks. Claimant's next visit with Dr. Heim occurred on December 14, 1999, at which time he changed claimant's medication and prescribed a knee brace for claimant to wear while walking. This medical visit with Dr. Heim on December 14, 1999, was paid for by the respondent in January of 2000 and was the last paid medical treatment.

Claimant next returned to Dr. Heim on November 8, 2000, again complaining of knee problems. Claimant again saw Dr. Heim on February 6, 2001, wherein he noted a small mass on the lateral side of claimant's right knee and ordered an MRI scan. Respondent has not accepted liability for Dr. Heim's office visit in November of 2000 or February of 2001, nor for the MRI scan.

As a result of respondent's failure to pay for these medical visits, claimant filed a claim for additional benefits which was received by the Commission on October 22, 2001. I have made claimant's AR-C form a part of the record herein.

Respondent contends that the claim filed by claimant for additional benefits in October 2001 is more than two years after the date of injury and more than one year after the date of last payment of compensation. Therefore, respondent contends that claimant's claim for additional benefits is barred by the statute of limitations.

ADJUDICATION

The statutory provisions governing claims for additional compensation is codified at A.C.A. §11-9-702(b)(1) which states:

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 the injury, whichever is greater.

Here, as previously noted, the date of last payment of compensation was December 14, 1999.

Based upon the Supreme Court's decision in *Plante v. Tyson Foods, Inc.*, 319 Ark. 126, 890 S.W. 2d 253 (1994), I find that claimant's claim for additional compensation benefits is not barred by the statute of limitations. In that particular case, the Court recognized its prior decisions holding that a respondent is deemed to have furnished medical services if the carrier or employer has actual knowledge or constructive knowledge that medical services are being provided. Here, I find that claimant's visits to Dr. Heim on November 8, 2000 and again on February 6, 2001, constituted the furnishing of medical services.

First, I note that when claimant sought medical treatment from Dr. Heim on December 14, 1999, he indicated that he was changing claimant's medication and was providing her with a knee brace to wear while walking. Certainly, Dr. Heim's medical report would indicate that additional medical services could be expected. In fact, evidence submitted indicates that the carrier was aware that claimant was receiving additional medical services from Dr. Heim. Respondent submitted into evidence notes from the carrier's claim representative. Those notes indicate that on September 21, 2000, the carrier was contacted by Dr. Heim's office indicating that claimant was present for a check up. Apparently, the claims representative indicated to Dr. Heim's office that it would not

guarantee payment at that time. Nevertheless, the carrier was aware that claimant was receiving additional medical treatment. The claims representative's notes dated October 10, 2000 also indicate that the carrier received a call from claimant's attorney at that time regarding the denial of additional medical treatment. Finally, on February 9, 2001, the carrier received an inquiry from Prime Medical Imaging regarding authorization for an MRI scan. Again, payment was denied. In its brief, respondent acknowledges these inquiries but notes that the visits were not approved for payment. However, as the Court recognized in *Plante* and in *Heflin v. Pepsi-Cola Bottling Company*, 244 Ark. 195, 424 S.W. 2d 365 (1968), it is the furnishing of medical services that tolls the statute of limitations, not payment for those medical services.

In summarizing its decision in *Plante*, the Court noted that the respondent's failure to receive actual notice of follow-up treatment was not determinative of the limitations issue where "payment of compensation" was made by respondent by virtue of the fact that medical services were actually furnished within the limitations period and that respondent had reason to know that these services would be furnished. Similarly, by virtue of Dr. Heim's medical report of December 14, 1999, respondent had reason to know that additional medical services would be furnished. In fact, respondent knew that additional medical services were in fact being provided to the claimant as evidenced by the claims representative's notes of October 21, 2000 and February 9, 2001. Thus, the carrier had actual notice that additional medical services were being provided to the claimant for treatment of her compensable knee injury. Having found that respondent furnished medical services on November 8, 2000 and again in February of 2001, I find that claimant's claim for additional compensation benefits filed on October 22, 2001, was within one year from the date of last payment of compensation benefits; therefore, her claim for additional compensation benefits is not barred by the statute of limitations.

ORDER

Claimant's claim for additional compensation benefits is not barred by the statute of limitations. Her claim for additional compensation benefits filed October 22, 2001 was within one year from the date of last payment of compensation benefits.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE