

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F308051

EDWARD CHARLES WRIGHT, EMPLOYEE **CLAIMANT**

**ARKANSAS DEMOCRAT GAZETTE,
INC., EMPLOYER** **RESPONDENT**

**WAUSAU INSURANCE COMPANY,
INSURANCE CARRIER/TPA** **RESPONDENT**

OPINION FILED DECEMBER 18, 2003

This matter before Chief Administrative Law Judge David Greenbaum submitted on the stipulated record on December 18, 2003, at Little Rock, Pulaski County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by Mr. Michael E. Ryburn, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A prehearing telephone conference was conducted December 17, 2003, in the above-styled case. Prehearing information filings have previously been submitted by both parties.

The parties agreed that the employee/employer/carrier relationship existed at all relevant times, including May 19, 2001; that the claimant reported a work-related incident on said date involving the unloading of a skid of paper, at which time the skid slipped out of his hand, causing a pallet to fall on his feet; and that respondents controverted the claim of injury in its entirety. Respondent further proposed to stipulate that claimant's wages were

sufficient to entitle him to a compensation rate of \$75.00 per week in the event claimant could prove entitlement to benefits.

By agreement of the parties, the issues presented for determination included:

- 1) Whether the Statute of Limitations bars this claim; and,
- 2) whether the claimant sustained a compensable injury on May 19, 2001, entitling him to workers' compensation benefits.

The claimant contended, in summary, that he sustained a compensable injury as the result of a specific incident identifiable in time and place of occurrence on May 19, 2001; that respondents should be held responsible for all reasonably necessary medical treatment, both past and future, together with disability benefits in an amount to be determined by this Commission. Respondents acknowledged that claimant reported a work-related incident involving his big toe on May 19, 2001. They maintain that claimant was offered medical treatment which was refused, and that claimant continued working until June 12, 2001, without further complaints. Respondents contend that the claimant did not file a claim for benefits until August 13, 2003, and that the claim is, therefore, barred by the Statute of Limitations.

In response to respondents' assertion that the claim was not filed until August 13, 2003, the claimant related that he could produce documentation that he notified a Commission legal advisor as early as June or July, 2003, that

he wished to file a claim, and that the filing of the claim was delayed because of his incarceration at the Arkansas Department of Corrections. However, claimant candidly conceded that he did not file a claim within two (2) years from the date of the admitted incident. Claimant further acknowledged that he did not obtain any medical treatment within two (2) years from the date of the alleged injury. The claimant requested that the Commission exercise discretion, and permit the claim to proceed despite the untimely filing.

Because the claimant, to date, has not obtained any medical evidence whatsoever to support his claim, he agreed to submit the legal issue of whether his claim was barred by the Statute of Limitations based solely on the stipulations and disclosures made during the prehearing conference. Accordingly, based on the stipulated record, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed at all relevant times through June 12, 2001.
3. The claimant reported a work-related incident to his employer on May 19, 2001.
4. The claimant failed to file a claim for workers' compensation benefits within two (2) years of the date of his alleged injury.

5. The within claim is barred by the Statute of Limitations.
6. Respondents have controverted this claim in its entirety.

DISCUSSION

The time for filing a workers' compensation claim is set out in Ark. Code Ann. §11-9-702 (Repl. 2002). It provides, in part:

(a) Time for Filing.

(1) A claim for compensation for disability on account of an injury, other than an occupational disease and occupational infection, shall be barred unless filed with the Workers' Compensation Commission within two (2) years from the date of the compensable injury. If, during the two-year period following the filing of the claim, the claimant receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter.

(B) For purposes of this section, the date of the compensable injury shall be defined as the date an injury is caused by an accident as set forth in §11-9-102(4).

It is undisputed that the date of the alleged injury was May 19, 2001. The claimant did not file a workers' compensation claim until August 13, 2003. Even if the claim was filed earlier, but was not recorded due to some clerical error, which is not conceded herein, nevertheless, by the claimant's own admission, the claim would not have been filed within two (2) years from the date of the alleged injury.

The burden of filing a claim within the statute of limitations is on the claimant. Further, the Courts cannot extend the period of the statute of

limitations on appeal, despite the fact that the claim may be meritorious. *Plunkett vs. St. Francis Valley Lumber Co.*, 25 Ark. App. 195, 755 S.W.2d 240 (1998).

Based upon the stipulated facts, I find that the within claim is barred as a matter of law pursuant to A.C.A. §11-9-702. Accordingly, the within claim is hereby denied and dismissed with prejudice.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge