

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F312407

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| DAN ECKERT, Employee | CLAIMANT |
| ALLTRISTA PLASTICS CORPORATION, Employer | RESPONDENT |
| TRAVELERS INSURANCE COMPANY, Carrier | RESPONDENT |

OPINION FILED JULY 8, 2004

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

Claimant represented by M. KEITH BLYTHE, Attorney, Fort Smith, Arkansas.

Respondents represented by PHILLIP CUFFMAN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 14, 2004, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on February 11, 2004, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties at all relevant times.
3. The claimant sustained a compensable injury to his upper extremity on May 14, 2000.
4. Respondents has paid some benefits including medical, temporary total disability, and permanent partial disability benefits based upon an 8 percent impairment to the body as a whole.

At the time of the hearing the parties agreed to stipulate as to the date on which

certain events occurred. Those dates are as follows:

1. Date of injury - May 14, 2000.
2. Left shoulder surgery - July 26, 2000.
3. Right shoulder surgery - November 1, 2000.
4. Temporary total disability benefits paid July 10, 2000 through May 7, 2001.
5. Permanent partial disability benefits paid November 2, 2001 through July 8, 2002.
6. Last medical treatment - October 29, 2001, payment for treatment December 7, 2001.
7. AR-C form requesting additional compensation benefits filed November 17, 2003.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to additional medical and temporary total disability benefits from August 2003 through a date yet to be determined.
2. Attorney fee.
3. Statute of limitations.

At the time of the hearing the parties agreed to litigate only the issue of whether the statute of limitations bars claimant's claim for additional compensation benefits.

The claimant contends he is entitled to additional temporary total disability from August 2003 through a date yet to be determined and additional medical treatment from Dr. Evans.

The respondents contend that this claim is barred by the statute of limitations. To respondents' knowledge the last medical care received by the claimant was October 29, 2001, and the last payment made toward the impairment rating was on June 28, 2002. The claimant has filed an AR-C after two years from the date of injury and one year after the last receipt of compensation benefits.

From a review of 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 witness and to observe his demeanor, 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 stipulations agreed to by the parties at the pre-hearing conference conducted on February 11, 2004, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation regarding various dates which has been previously set forth is also hereby accepted as fact.

3. Claimant's claim for additional compensation benefits is barred by the statute of limitations codified at A.C.A. §11-9-702(b)(1). Specifically, claimant failed to file a claim for additional compensation benefits within one year from the date of last payment of compensation.

FACTUAL BACKGROUND

The claimant worked as a maintenance engineer for the respondent. Claimant suffered compensable injuries to both of his upper extremities on May 14, 2000. As a result of those compensable injuries the claimant underwent surgery on his left shoulder on July 26, 2000 and on his right shoulder on November 1, 2000. Respondent accepted claimant's injury as compensable and paid temporary total disability benefits, medical benefits, and permanent partial disability benefits based upon an 8 percent impairment rating assigned by claimant's treating physician. On November 29, 2001 Dr. Evans released claimant to return to work with a permanent restriction of four breaks per day. Claimant did return to work for the respondent performing limited duty-type work until he

was terminated on September 10, 2003. Claimant testified that in the last week before his termination he was required to perform jobs involving overhead work which caused additional pain in his shoulders. As a result, claimant sought additional medical treatment from Dr. Evans on September 17, 2003. Dr. Evans prescribed medication and ordered physical therapy. Respondent did not accept liability for additional compensation benefits based upon its contention that the statute of limitations barred the claim. As a result, claimant filed this current claim.

ADJUDICATION

As previously noted, claimant's injury was accepted by respondent as compensable and compensation benefits including temporary total disability benefits, medical benefits, and permanent partial disability benefits were paid to him. Therefore, claimant's current request which was filed with the Commission on November 17, 2003 is a request for additional benefits. The statute of limitations with regard to the time for filing a claim for additional compensation benefits is codified at A.C.A. §11-9-702(b)(1) which states as follows:

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.

In this particular case claimant's injury occurred on May 14, 2000; therefore, two years from that date would have been May 14, 2002. However, the date of last payment of compensation occurred on July 8, 2002, when claimant received his last payment of permanent partial disability benefits. While claimant's last medical visit had occurred on October 29, 2001, he did receive additional compensation in the form of permanent partial disability benefits subsequent to that date.

Since the last payment of compensation to the claimant occurred on July 8, 2002, claimant had one year from that date to file a claim for additional compensation benefits. This is later than two years from the date of injury. However, claimant did not file his claim for additional compensation benefits until November 17, 2003, more than one year after the date of last payment of compensation.

I should also note that the record contains no evidence that the statute was tolled at any time within one year after July 8, 2002. Claimant testified that he did not seek any additional medical treatment until September 17, 2003; therefore, it cannot be argued that the one-year statute of limitation was tolled by claimant receiving medical treatment within one year after July 8, 2002.

As stated in *Plante v. Tyson Foods, Inc.*, 319 Ark. 126, 890 S.W. 2d 253 (1994), the primary purpose of the one-year statute of limitations set forth in A.C.A. §11-9-702(b)(1) is to give the claimant an additional one-year period of time to determine whether they have been fully compensated for their injury. The burden of filing a claim for additional benefits within the statute of limitations is on the claimant. *St. John v. Arkansas Lime Company*, 8 Ark. App. 278, 651 S.W. 2d 104 (1983).

In summary, claimant was last paid compensation benefits on July 8, 2002 when he received his last payment of permanent partial disability benefits. Pursuant to A.C.A. §11-9-702(b)(1) claimant had one year from that date to file a claim for additional compensation benefits. Claimant did not file his claim for additional compensation benefits until November 17, 2003, more than one year later. Therefore, the one-year statute has run and claimant's claim for additional compensation benefits is barred.

ORDER

_____ Claimant's claim for additional compensation benefits is barred by the statute of limitations codified at A.C.A. §11-19-702(b)(1). Claimant did not file his claim for additional

compensation benefits within one year from the date of last payment of compensation.

Therefore, his claim for additional compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE