

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. E907010**

**GLENN E. ESKOLA**

**CLAIMANT**

**LITTLE ROCK PUBLIC SCHOOLS**

**RESPONDENT EMPLOYER**

**MUNICIPAL LEAGUE WCT**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED FEBRUARY 2, 2004**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE J. CHRIS BRADLEY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Little Rock, Arkansas on January 7, 2004. A prehearing conference was held on December 2, 2003 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a compensable injury on September 15, 1998.
2. The compensation rate is the maximum rate for a 1998 injury.

The claimant contends that he is entitled to some additional medical benefits in connection with his admittedly compensable injury of September 15, 1998.

The respondents contend the claim is barred by the statute of limitations, since the claim for additional benefits was filed after the statute had run. The respondents

contend that a Form C was filed initially which asked for initial benefits and additional benefits and this was before any benefits were paid. The respondents contend the Form C filing does not constitute a valid filing for additional benefits. The respondents rely on *Miller v. Southern Machine and Iron Works*, 388 S.W.2d 391, 239 Ark. 218 (1965) for authority of their contention. The respondents contend the last payment for medical treatment was May 8, 2000.

The issues to be litigated are:

1. Statute of limitations.
2. Additional medical 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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

**FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW**

1. There was a compensable injury on September 15, 1998.
2. The compensation rate is the maximum rate for a 1998 injury.
3. The preponderance of the evidence provides that the claim for additional medical benefits is barred by the statute of limitations.
4. The claim for additional benefits is respectfully denied and dismissed.

## **DISCUSSION**

The claimant, 57 years old, spent most of his working life as a math teacher and football coach. According to the claimant, on September 15, 1998, he was practicing with his team in the gym when a player's helmet caught him on the right shoulder as a play was being made. The claimant fell to the ground. The team doctor, Dr. Richard Nix, an orthopedic surgeon, treated the claimant. According to the claimant, he completed an accident report at the school office and also advised Dr. Nix that his injury was work related. The claimant was treated with medicine, a cortisone shot and physical therapy. By July 1999, the claimant testified that he had not shown a lot of improvement so he completed some additional forms at the school office and was sent to Dr. Reed Kilgore. According to the claimant, Dr. Reed ran a number of diagnostic tests and recommended surgery. The claimant retired at the end of 1999. The claimant testified that he had been busy with volunteer work, football coaching and helping his family with construction work and had been unable to set aside three months for the shoulder surgery and recovery.

Finally, on June 13, 2003, the claimant underwent shoulder surgery. Before the surgery, the claimant testified that he continued to have problems with his shoulder. The claimant spoke with Patrice Settles in May 2003 about surgery and was told the statute of limitations had run on the claim. The last doctor's visit for the shoulder problem was September 16, 2003 and the shoulder is much better.

Under cross examination, the claimant verified that he completed a Commission Form C in June 1999, where he asked for "Initial Benefits" and "Additional Benefits." The claimant confirmed at the time of the filing that he had not received any benefits

from the Worker's Compensation Trust or the school regarding any medical visits or disability. The claimant confirmed that the Municipal League began paying for doctors' visits after the Form C was filed. The claimant confirmed that he treated with Dr. Reed Kilgore and last saw him in May 2000. The claimant confirmed that he continued to have shoulder problems between May 2000 and May 2003; however, he did not seek medical attention during that period.

The claimant confirmed that he filed his medical bills on his group health insurance from September 15, 1998 through June 1999. Although the claimant completed an accident report following his September 15, 1998 incident, he did not file the AR-C Form until June 1999.

The claim was accepted as a compensable injury and medical benefits were paid on the claim. The first issue to consider is whether the statute of limitations bars the claim for additional medical benefits. Ark. Code Ann. §11-9-702(b) provides:

**TIME FOR FILING ADDITIONAL COMPENSATION.** (1) 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.

The evidence provides that the claimant filed a Form AR-C on June 17, 1999, where he asked for initial benefits and additional benefits simultaneously. At the time of the filing, respondents had not paid any benefits; however, after receiving the AR-C Form, respondents began paying medical benefits. The evidence provides that the last payment for medical was May 8, 2000. The claimant retired from his employment in late 1999 and continued to be active with volunteer work, football and with his family in

building houses. His testimony was that he did not have time for the three-month setback that shoulder surgery would require until in June 2003, but upon inquiring about the surgery, respondents advised that the statute of limitations now bars his claim.

The respondents rely on *Miller v. Southern Mach. & Iron Works*, 239 Ark. 218, 388 S.W.2d 391 (1965), which holds that the statute section on additional compensation is applicable only when a claimant had received compensation and then sought additional compensation. In the present case, the claimant had never received any initial benefits when he asked for additional benefits.

I find the evidence is clear that the claimant sustained a September 15, 1998, compensable shoulder injury where respondent paid medical benefits. The claimant last received medical treatment on May 8, 2000, where respondents paid benefits. The next medical sought for treatment of the compensable shoulder condition was in May 2003, with no Form AR-C filing between May 8, 2000 and May 2003, for additional benefits. I find the claimant has failed to prove by a preponderance of the evidence that he has made a timely filing to toll the statute of limitations by his June 17, 1999, initial and additional benefits request AR-C filing. I find the AR-C filed on June 17, 1999, was an initial claim for benefits and additional benefits were not applicable. I find the preponderance of the evidence provides that the claim is barred by the statute of limitations. The claimant did not request additional benefits within one year of the last payment of compensation. While the claimant did request initial and additional benefits within two years of the date of the injury, the request for additional benefits is only applicable when the claimant has already received compensation. *Miller, supra*. In the instant case, the claimant had not received any compensation before asking for

additional benefits; therefore, the claim could not be considered a claim for additional compensation.

**ORDER**

The preponderance of the evidence provides that the claim for additional medical benefits is barred by the statute of limitations. The claim for additional benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**