

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER E418362**

<b>DANNY L. GOODMAN, JR., EMPLOYEE</b>	<b>CLAIMANT</b>
<b>CENTRAL ARKANSAS AUTO AUCTION, EMPLOYER</b>	<b>RESPONDENT #1</b>
<b>ZENITH INSURANCE COMPANY, CARRIER</b>	<b>RESPONDENT #1</b>
<b>DEATH &amp; PERMANENT TOTAL DISABILITY TRUST FUND</b>	<b>RESPONDENT #2</b>

**OPINION FILED OCTOBER 22, 2004**

The case is submitted for an Opinion on briefs filed by the parties and upon the record of the Arkansas Workers' Compensation Commission.

Claimant was represented by Jesse B. Daggett, Attorney at Law, Marianna, Arkansas.

Respondent #1 was not a party in this proceeding.

Respondent #2 was represented by Terry Pence, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A prehearing telephone conference was held on this claim on April 27, 2004; a Prehearing Order was filed on April 28, 2004. As reflected in the Prehearing Order, the parties agreed that this claim would be submitted for adjudication upon agreed joint stipulations and briefs. The parties also agreed that the facts are not in dispute and that the issues remaining are questions of law. The Prehearing Order directed the parties to prepare agreed joint stipulations of fact; after those stipulations were filed, each party was to submit a brief identifying those issues the party believed must be resolved, accompanied by arguments of law and fact. Although both parties raised numerous issues in their briefs,

I believe the dispositive issue to be whether this claim is barred by the applicable statute of limitations.

The agreed joint stipulations submitted by the parties, which are hereby accepted, are as follows:

1. Danny L. Goodman, Jr. was killed in an industrial accident and as a result of his death his wife and children were paid survivor benefits.

2. Karen Goodman, as the widow of Danny L. Goodman, Jr., was paid appropriate widow's benefits until her remarriage on February 28, 1998.

3. On February 28, 1998, Karen Goodman married Jeffrey A. Danenhower.

4. That marriage ended by a Decree of Annulment dated June 15, 1998.

5. That the oral deposition of Karen Goodman taken in Marianna, Arkansas on February 17, 2004 may be considered by the Commission in deciding this case.

6. Karen Goodman was paid a lump sum equal to 104 weeks of benefits, which amounted to \$7,324.42, in March 1998.

7. Karen Goodman has not repaid any portion of the \$7,324.42 to the carrier.

8. The Death & Permanent Total Disability Trust Fund began payment of benefits to Daniel Goodman, decedent's minor child, on November 10, 2003.

### **THE RECORD**

As noted above, the parties stipulated that the agreed joint stipulations and their respective briefs would constitute the record. The agreed joint stipulations incorporate other documents by reference. Further, in order to resolve the statute of limitations issue, I relied on certain documents in the Commission's file. See *Sexton v. Atlas Carriers*, Full Workers' Compensation Commission Opinion filed July 25, 2002 (E510879). Therefore,

to clearly identify those items relied upon to produce this Opinion, the following documents are identified and will be “blue-backed” or otherwise designated as the record in this matter:

1. The death certificate of Danny L. Goodman, Jr.;
2. Jesse B. Daggett’s November 4, 2003 letter to the Commission;
3. The Prehearing Order filed April 28, 2004;
4. The parties’ agreed joint stipulations in a document headed “Stipulation,” received June 22, 2004;
5. The marriage license issued to Jeffrey Ashton Danenhower and Karen McNair Goodman dated February 25, 1998;
6. The decree of annulment in case number E98-664 entered by the Chancery Court of Washington County, Arkansas on June 15, 1998;
7. The oral deposition of Karen Goodman dated February 17, 2004;
8. Claimant Karen Goodman’s brief received June 25, 2004;
9. The brief of the Second Injury Fund received July 9, 2004; and
10. Claimant Karen Goodman’s reply brief received July 26, 2004.

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### **DISCUSSION**

Danny L. Goodman, Jr. (hereinafter “decedent”) died in an industrial accident on November 3, 1994. Karen Goodman (hereinafter “Goodman”), as the widow of the decedent, was paid appropriate widow’s benefits until her remarriage on February 28, 1998. Pursuant to law, Goodman was then paid a lump sum equal to 104 weeks of benefits, in the total amount of \$7,324.42, in March 1998. However, Goodman’s February 28, 1998 marriage was subsequently annulled, as evidenced by a decree of annulment

dated June 15, 1998.

Decedent's minor children also received survivor benefits. The Death & Permanent Total Disability Trust Fund (hereinafter "Fund") began payment of benefits to Daniel Goodman, a minor child of decedent and Goodman, on November 10, 2003 (the other children are no longer dependents). As of February 17, 2004, the date of Goodman's deposition, Daniel Goodman continued to receive these benefits. Goodman does not claim that the benefits being paid to Daniel Goodman are incorrect in any manner.

On November 4, 2003, Goodman's attorney wrote the Commission, requesting that his letter be considered "as a claim for the reinstatement of those benefits" previously paid to Goodman. Goodman argues that the annulment of her February 28, 1998 marriage restored her to her former status as decedent's widow, so that she remains eligible for benefits under Ark. Code Ann. § 11-9-527. The Fund raises a number of defenses and arguments in response; one of these defenses invokes the statute of limitations in Ark. Code Ann. § 11-9-702.

The applicable statute of limitations provides:

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.

Ark. Code Ann. § 11-9-702(b)(1). Compensation for the death of an employee under Ark. Code Ann. § 11-9-527 is included within the term "any compensation" used in § 11-9-702(b)(1). See Ark. Code Ann. § 11-9-102(5); see also Perkins v. Arkansas State Highway Dep't, 5 Ark. App. 203, 634 S.W.2d 399 (1982) (treating a claim for "widow's benefits" as a claim for compensation under the statute's predecessor, Ark. Stat. Ann. § 81-1318(b)).

I find that the limitations contained in Ark. Code Ann. § 11-9-702(b)(1) bar Goodman's claim. The decedent's fatal injury and death occurred on November 3, 1994. Thus, Goodman's November 2003 claim for "reinstatement" of benefits was presented more than two years from the date of the decedent's injury. Although Goodman received a lump sum equal to 104 weeks of benefits in March of 1998, the limitation regarding the last payment of compensation would not commence to run until March of 2000, the date the last payment of compensation would have been due if the compensation had been paid in installments only as they accrued. See Southern Cotton Oil Co. v. Friar, 247 Ark. 98, 444 S.W.2d 556 (1969). Again, Goodman's November 2003 claim was presented more than one year from the date of the last payment of compensation.

Goodman's minor child continues to receive compensation under Ark. Code Ann. § 11-9-527; this raises the question of whether such payments toll the statute as to Goodman. If the claims of Goodman and her minor child are both derivative of decedent's rights, then it would seem that payment of compensation to one would toll the statute as to the other. However, if the claims of Goodman and her minor child are not derivative, but are instead independent of the decedent's rights and separate from each other, then the statute of limitations and any tolling acts would seem to operate independently upon each claim. Cf. 54 C.J.S. Limitations of Actions § 15 (1987) ("Where there is no joint right of action, a bar as to one potential plaintiff is not a bar to others."); compare Smallwood v. Ellis Gin Co., 10 Ark. App. 41, 44, 661 S.W.2d 410, \_\_\_ (1983) ("The plea of limitations is personal to the party pleading it. Therefore, it is not a common defense and cannot inure to the benefit of a party who does not plead it.").

The general rule appears to be that each death benefit claim is a separate,

independent claim, not derived from the rights of the decedent. “The dependent’s right to death benefits is created directly by statute; it is not derived from the rights of the deceased employee.” 5 Arthur Larson & Lex K. Larson, Larson’s Workers’ Compensation Law § 98.01[1] (2002). Another authority notes:

A beneficiary’s right to death benefits is an independent right derived from statute, not from the rights of the decedent worker.

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The rights of claimants to beneficiary compensation are individual rights, and claims asserting such rights are separate claims.

99 C.J.S. Workers’ Compensation § 248 (2000) (footnotes and citations omitted).

While I have been unable to locate an Arkansas case or Commission opinion directly on point, it appears that Arkansas would follow the general rule. In § 11-9-527(c) separate categories of beneficiaries are established; in § 11-9-527(e) provision is made for apportionment of benefits along these separate categories. In Roach Mfg. Co. v. Cole, 265 Ark. 908, 582 S.W.2d 268 (1979), the Arkansas Supreme Court affirmed Commission findings that a minor child succeeded in establishing entitlement to death benefits, but that the widow failed to establish such an entitlement. These claims were treated separately for purposes of proof; perhaps it would be logical to treat them separately for purposes of the statute of limitations. In Arkansas Vinegar Co. v. Ashby, 294 Ark. 412, 743 S.W.2d 798 (1988), the Arkansas Supreme Court agreed “that the commission was wrong in deciding that the carrier was entitled to ‘credit’ the lump sum payment to the widow against the periodic payments due the remaining dependents.” Again, this holding emphasizes the independent, separate nature of death benefit claims.

I acknowledge the language of § 11-9-527(c)(2), which provides for additional payment to a widow on account of each child. However, this provision merely specifies the

recipient and additional amount of payment in cases involving both a dependent surviving spouse and a dependent surviving child. Under the authorities cited above, including the Arkansas Supreme Court decisions in Roach Mfg. Co. v. Cole and Arkansas Vinegar Co. v. Ashby, a widow's death benefit claim would still be separate and independent from the claim of a minor child for other purposes.

Based upon the foregoing, I find that the Fund's continuing payment of compensation to the minor child does not toll the statute of limitations as to Goodman. Goodman's claim for compensation under § 11-9-527 is separate and independent from her minor child's claim. See 99 C.J.S. Workers' Compensation § 248 (2000). The statute of limitations and any tolling act operate upon each claim independently; an act tolling the statute as to the minor child's claim does not inure to Goodman's benefit. Compare Smallwood, 10 Ark. App. at 44, 661 S.W.2d at \_\_\_ (stating that the statute of limitations is not a common defense).

To summarize, I find that Goodman's claim is barred by the limitations contained in Ark. Code Ann. § 11-9-702(b)(1). Further, the Fund's continuing payment of benefits to the minor child, Daniel Goodman, does not toll the statute of limitations as to Goodman's claim. Because Goodman's claim is barred, it is not necessary to discuss the remaining issues raised by the parties.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. Danny L. Goodman, Jr. died in an industrial accident on November 3, 1994, and as a result of his death his wife and children were paid survivor benefits.
3. Karen Goodman, as the widow of Danny L. Goodman, Jr., was paid appropriate

widow's benefits until her remarriage on February 28, 1998.

4. On February 28, 1998, Karen Goodman married Jeffrey A. Danenhower.

5. That marriage ended by a Decree of Annulment dated June 15, 1998.

6. The oral deposition of Karen Goodman taken in Marianna, Arkansas on February 17, 2004 may be considered by the Commission in deciding this case.

7. Karen Goodman was paid a lump sum equal to 104 weeks of benefits, which amounted to \$7,324.42, in March 1998.

8. Karen Goodman has not repaid any portion of the \$7,324.42 to the carrier.

9. The Death & Permanent Total Disability Trust Fund began payment of benefits to Daniel Goodman, decedent's minor child, on November 10, 2003.

10. Karen Goodman sought reinstatement of her widow's benefits previously paid under Ark. Code Ann. § 11-9-527 through a letter dated November 4, 2003.

11. Karen Goodman's claim is barred by the limitations contained in Ark. Code Ann. § 11-9-702(b)(1). Her November 2003 claim for reinstatement of benefits was presented more than two years from the date of the decedent's injury and death on November 3, 1994; it was presented more one year from the date of the last payment of compensation in March of 2000.

12. The Death & Permanent Total Disability Trust Fund's continuing payment of compensation to Daniel Goodman, the remaining minor child of the decedent and Karen Goodman, does not toll the statute of limitations as to Karen Goodman's claim. These two claims are separate and independent; the statute of limitations and any tolling act apply to each claim independently, so that the continuing payment of compensation to Daniel Goodman does not toll the statute as to Karen Goodman.

13. Because Karen Goodman's claim is barred by the statute of limitation, it is not necessary to discuss the remaining issues raised by the parties.

**ORDER**

Because Karen Goodman's claim is barred by the applicable statute of limitations, her claim is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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D. FRANKLIN AREY, III,  
Administrative Law Judge

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