

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F311948

LORLINDA HACKETT, Employee	CLAIMANT
HAIRLINES HAIRSTYLING, Employer	RESPONDENT
STATE FARM INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED APRIL 22, 2004

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by CAROL LOCKARD WORLEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 24, 2004, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 28, 2004, and a pre-hearing order was filed on January 29, 2004. 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 on October 31, 2003.

At the time of the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$360.08 which would entitle her to compensation at the rate of \$240.00 per week for total disability benefits and \$180.00 per week for permanent partial disability benefits. The parties also agreed to stipulate that the claimant filed an AR-C with the Commission on December 1, 2003.

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

1. Compensability.
2. Medical.
3. Temporary total disability benefits.
4. Compensation rate.
5. Attorney fee.
6. Statute of limitations.

The claimant contends she suffered a compensable injury in the form of carpal tunnel syndrome as a result of her employment with respondent.

The respondents contend the claimant did not suffer a compensable injury on October 31, 2003. She has not suffered a specific incident nor has she suffered a gradual onset injury. Further, respondents contend the statute of limitations has run with regard to this claim.

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 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 January 28, 2004, and contained in a pre-hearing order filed January 29, 2004, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$360.08 which would entitle her to compensation at the rate of \$240.00 per week for total disability and \$180.00 per week for permanent partial disability is also hereby accepted as fact.

3. The parties' stipulation that claimant filed her AR-C on December 1, 2003 is also

hereby accepted as fact.

4. Claimant's claim for compensation is barred by the statute of limitations.

#### FACTUAL BACKGROUND

The claimant is a very nice 39-year-old woman who is a high school graduate and a certified cosmetologist. Claimant has been a certified cosmetologist for 22 years and has worked for respondent throughout that period of time. Although claimant is licensed to cut and style hair, she has specialized in artificial nails, manicures, pedicures, and facials over the last ten years. Claimant's job duties with respondent required her to perform a number of activities which involve extensive use of her hands.

Claimant testified that she has had problems with her hands for several years. Those problems culminated on October 31, 2003, when the claimant picked up her cell phone and her hand spasmed resulting in an inability to straighten out her fingers. Following that incident the claimant sought medical treatment from an acupuncturist and a chiropractor before she was evaluated by Dr. James Moore on February 17, 2004. Dr. Moore ordered an NCV study which revealed bilateral carpal tunnel syndrome. Dr. Moore has recommended a release of the claimant's right hand.

Claimant has filed this claim contending that her bilateral carpal tunnel syndrome is causally related to her employment with the respondent. She seeks payment of medical treatment, temporary total disability benefits, and a controverted attorney fee. Respondent contends that claimant did not suffer a compensable injury and also raises as an issue the statute of limitations.

#### ADJUDICATION

A.C.A. §11-9-702(a)(1) states that claims for compensation are barred unless they are filed with the Arkansas Workers' Compensation Commission within two years from the

date of the injury. As previously noted, the parties have stipulated that claimant's AR-C was filed with the Commission on December 1, 2003. Thus, the question is whether this was within two years from the date of injury. The date the statute of limitations begins running for a gradual onset carpal tunnel injury was discussed by the Full Commission in *Woods v. Tony Bull Motor Company*, Full Commission filed September 5, 2000 (E901847). In that particular case, the Full Commission noted that the administrative law judge had incorrectly determined that the statute of limitations did not begin to run until the true extent of the injury was known and caused an incapacitation to earn wages for a period long enough to entitle claimant to compensation benefits. Relying upon the decision in *Minnesota Mining and Manufacturing v. Baker*, 337 Ark. 94, 989 S.W. 2d 151 (1999), the Commission held that the statute of limitations begins running when the injury develops or becomes apparent to the employee.

Ms. Woods' right carpal tunnel syndrome, which the Commission has determined to be compensable, is a scheduled injury to the wrist. (Citations omitted.) The administrative law judge erred, however, in finding that the statute of limitations does not commence to run until the true extent of the injury manifests and causes an incapacitation to earn wages which persist long enough to entitle the claimant to benefits under Ark. Code. Ann. §11-9-501. The Arkansas Supreme Court has held that incapacity to earn wages is *presumed* for scheduled injury. See, *Minnesota Mining and Manufacturing v. Baker*, 337 Ark. 94, 989 S.W. 2d 151 (1999).

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As we interpret *Baker, supra*, the statute of limitations commences running when the injury *develops or becomes apparent* to the employee. (Emphasis supplied.)

In this particular case, I find that claimant's carpal tunnel injury developed and became apparent to the claimant more than two years prior to the filing of her claim on December 1, 2003. Claimant testified at the hearing that she had suffered pain in her hands for the last ten years. Indeed, the February 17, 2004 medical report of Dr. Moore

indicates that claimant gave a history of hand problems which began six years ago.

Claimant testified at the hearing that because of her hand problems she had sought medical treatment from a massage therapist, a chiropractic physician, and an acupuncturist. Included in the documentary evidence is a letter from Leslie Pique, a licensed massage therapist. Pique indicates in her letter of February 9, 2004, that she has seen the claimant once a month over the last several years for complaints of pain in her hands, arms, shoulders, and neck. Claimant testified that she sought medical treatment from a chiropractic physician for the problems with her hands. Claimant also testified at the hearing that she has worn braces on her hands at night due to hand pain for approximately six years. Claimant also acknowledged that approximately six years ago she reduced the number of hours she worked because of the problems with her hands and that approximately four years ago she again reduced her hours to working only three days per week because of problems with her hands.

Finally, I note that claimant testified at the hearing that she had associated these hand problems over the years to her employment with respondent.

Q. As far as the problems that you were having with your hands six, eight, ten years ago, were you associating those problems with the activities that you were doing at work?

A. Work is all - - Yes.

In summary, the Full Commission has stated that the statute of limitations begins running when an injury develops or becomes apparent to the employee. In this particular case, claimant testified that she had been having hand pain over the course of the last ten years. As a result of those hand problems claimant has sought medical treatment from massage therapists, a chiropractic physician, and an acupuncturist. Claimant has been wearing braces on her hands at night for approximately six years and has significantly reduced her work hours due to hand problems six and four years ago. Finally, claimant

testified that over the course of the last six to ten years she has associated her hand problems with her employment with the respondent. Given this evidence, I find that claimant's injury had developed and become apparent to the employee more than two years prior to the date she filed her AR-C form with the Commission on December 1, 2003. Having found that this injury had developed and become apparent to the claimant more than two years prior to December 1, 2003, I find that claimant's claim is barred by the two-year statute of limitations codified at A.C.A. §11-9-702(a)(1).

Even if a claim may be meritorious, the period of the statute of limitations may not be extended. *Plunkett v. St. Francis Valley Lumber Company*, 25 Ark. App. 195, 755 S.W. 2d 240 (1998). The time within which a claim must be filed is a matter of public policy and the necessity of the statute of limitations was explained in *Owen v. Wilson*, 260 Ark. 21, 537 S.W. 2d 543 (1976) wherein the Arkansas Supreme Court quoted *Chase Securities Corporation v. Donaldson*, 325 U.S. 304, 65 S.Ct. 1137, 89 L. Ed. 1628 (1945):

Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients rather than principles. They are practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost [citation omitted.] They are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim or the avoidable and unavoidable delay. They have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate.

#### ORDER

Claimant's claim for compensation benefits is barred by the statute of limitations codified at A.C.A. §11-9-702(a)(1). Therefore, her claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE