

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310780

RICHARD SLISHER,
EMPLOYEE

CLAIMANT

CONAGRA FOODS, INC.,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED JULY 22, 2004

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, at Batesville, Independence County, Arkansas.

The claimant was PRO SE.

The respondent was represented by HONORABLE BETTY DEMORY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on June 23, 2004 in Batesville, Arkansas. A prehearing order was entered in this case on April 30, 2004. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties and are hereby accepted:

1. That the employee-employer relationship existed on June 11, 1992.

2. The claimant filed a claim for a work-related injury occurring on that date for which respondent paid \$716.00 in medical expenses for dates of service of June 24, 1992, July 13, 1992, and August 17, 1992.

3. The present claim for additional benefits was filed on October 15, 2003.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Treatment for broken tooth.
2. One and one-half days of missed work.
3. Whether the claim is barred by the statute of limitations.

The record consists of the June 23, 2004 hearing transcript and the exhibits contained therein.

DISCUSSION

1. Statute of Limitations.

In the present case, there appears to be no dispute that the claimant's 1992 tooth injury was not scheduled under Ark. Code Ann. § 11-9-521. Likewise, there is no dispute that the claimant did not experience over seven days of disability prior to filing the present claim for additional benefits on October 15, 2003.

The statute of limitations for the filing of claims for additional compensation for injuries sustained prior to July 1, 1993 is set forth in Ark. Code Ann. § 11-9-702(b) (1987). This subsection provides that claims 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 furnishing of medical treatment constitutes compensation for the purposes of this statute, and it is the furnishing of medical treatment, not the actual payment for those services, which constitutes the payment of compensation for the purposes of this statute. Heflin v. Pepsi Cola Bottling Co., 195 Ark. 244, 424 S.W.2d 365 (1969); Cheshire v. Foam Molding, 37 Ark. App. 78, 822 S.W.2d 412 (1992). In this regard, the key is that the employer must furnish the medical treatment in order to toll the limitations period. See, McFall v. U.S. Tobacco Co., 246 Ark. 43, 434 S.W.2d 838 (1969). Consequently, the receipt of medical treatment is not sufficient, standing alone, to prevent the statute of limitations from barring a claim. Instead, it must be shown that the employer furnished the medical services.

An obvious threshold question whenever the statute of limitations is at issue involves the determination of when, and if, the limitations period commenced to run. Our Courts have held on numerous occasions that the statute of limitations for workers' compensation claims does not commence to run until the injury causes an incapacity to earn the wages which the employee was receiving at the time of the accident and until the incapacity continues long enough to entitle him to benefits under Ark. Code Ann. § 11-9-501(a) (1987). See, e.g., Hall's Cleaners v. Wortham, 311 Ark. 103, 842 S.W.2d 7 (1992); Cornish Welding Shop v. Galbraith, 278 Ark. 185, 644 S.W.2d 926 (1983); Donaldson v. Calvert-McBride Printing Co., 217 Ark. 625, 232 S.W.2d 651 (1950); Arkansas Louisiana Gas Co. v. Grooms, 10 Ark. App. 92, 661 S.W.2d 433 (1983); Shepherd v. Easterling Construction Company, 7 Ark. App. 192, 646 S.W.2d 37 (1983). In this regard, the Arkansas Supreme Court has characterized Arkansas as a "compensable injury" state because the statute of limitations does not necessarily begin running on the date of the accident. Wortham, supra. Instead, the limitations period does not begin running until the injury becomes compensable. Id.

In the present case, the respondents assert that the statute of limitations began to run when the claimant missed approximately one-half day of work on June 11, 1992. However, as discussed above, the Arkansas Courts have interpreted that the statute of limitations in effect prior to the amendments of Act 796 of 1993 did not begin to run until an injured worker's wage loss continued long enough to entitle him to disability benefits under Ark. Code Ann. § 11-9-501(a). Since the claimant did not cumulatively miss seven days of work prior to filing the present claim for additional benefits, I find that the applicable statute of limitations did not begin to run prior to the filing of the claim in this case, and therefore does not bar the present claim for additional benefits.

2. Reasonable necessity of 2003 dental treatment.

The respondents assert that the 2003 dental work the claimant received for his broken tooth was due to either an independent intervening cause or wear and tear. However, Dr. William Beller provided the only expert opinion in the record, and I find that Dr. Beller's March 8, 2004 opinion establishes by a preponderance of the credible evidence that the claimant's original 1992 accident and injury caused the need for additional treatment at issue in 2003.

3. Temporary disability compensation.

To date, the claimant has not yet experienced seven days of disability for his 1992 injury. Consequently, the claimant has not yet missed sufficient work to become entitled to temporary disability benefits for his 1992 injury under Ark. Code Ann. § 11-9-501(a).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That the employee-employer relationship existed on June 11, 1992.

2. The claimant filed a claim for a work-related injury occurring on that date for which respondents paid \$716.00 in medical expenses for dates of service of June 24, 1992, July 13, 1992, and August 17, 1992.

3. The present claim for additional benefits was filed on October 15, 2003.

4. The statute of limitations does not bar the present claim for additional benefits.

5. The claimant has established by a preponderance of the credible evidence that the dental treatment at issue that he received in 2003 was reasonably necessary for his work-related injury.

6. To date the claimant has not missed sufficient

time from work for his compensable injury so as to be entitled to any temporary disability compensation.

AWARD

The respondent is directed to pay medical benefits in accordance with the findings of fact set forth herein.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge