

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E610031

LINDA E. CAMP, EMPLOYEE

CLAIMANT

**WAL-MART STORES, INC.,
SELF-INSURED EMPLOYER**

RESPONDENT

CLAIMS MANAGEMENT, INC., TPA

RESPONDENT

OPINION FILED APRIL 20, 2005

This matter comes before Administrative Law Judge J. Mark White on the record.

Claimant represented by Mr. Philip Wilson, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. John Webster, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

Pursuant to the Prehearing Order filed February 28, 2005, the parties agreed to submit consideration of this claim on a stipulated record. The record is comprised of the Prehearing Order filed February 28, 2005; the Order of Dismissal entered by the Commission on August 8, 1997; and the hearing brief with attached exhibits submitted by the respondents on March 28, 2005. The claimant chose not to file a brief or exhibits.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier relationship existed at all relevant times, including December 15, 1994; that this

claim was administratively dismissed by the Commission on August 8, 1997, without a hearing; and that the claimant filed her present request for initial benefits on August 30, 2004.

The parties agreed that the issues to be presented were whether this claim is barred by the statute of limitations. All other issues, including compensability, temporary and permanent benefits, and change of physician, are specifically reserved by the parties.

The claimant contends that this is a pre-Act 796 case; that the claim was originally accepted as compensable and has now been controverted; that the respondents owe the appropriate attorney's fees on all benefits previously paid or to be paid in the future; that she had an injury and ultimately it was reported; that the respondents paid medical benefits concerning this claim; that this claim was administratively dismissed on August 8, 1997, without actual notice to the claimant and without a hearing; that since this is an old act case all reasonable doubts should be resolved in favor of the claimant; that the case law is quite clear that if the respondents choose to deny compensability they will be responsible for benefits previously paid or to be paid in the future should the claim be held compensable; and that the case law is crystal clear that a dismissal of the claim without a hearing has been held by the Courts as not to be a valid dismissal.

Respondents contend that this claim was dismissed on August 8, 1997; and that the claimant did not request initial benefits or a change of physician until August 30, 2004.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include the respondents' hearing brief, documentary exhibits, and other matters properly before the Commission, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that she received, in the two-year period following the filing of her claim, any weekly benefit compensation or any medical treatment resulting from her alleged compensable injury.
4. This claim is therefore barred by the statute of limitations set forth at Ark. Code Ann. § 11-9-702 (a)(1).

DISCUSSION

The claimant allegedly sustained an injury to her back in December 1994 when another employee “rammed” her with a loaded shopping cart. By letter dated July 25, 1996, attorney Denver Thornton submitted a Form AR-C Claim for Compensation on the claimant’s behalf. The AR-C requested “initial benefits” including temporary total disability, permanent partial disability, attorney’s fees, medical expenses, and change of physician. The respondents filed a Form AR-1 First Report of Injury dated August 8, 1996. The AR-1 identified the claimant’s physician as Dr. Fred Murphy in Magnolia, but the record does not reveal whether Dr. Murphy actually treated the claimant for this alleged injury.

On July 7, 1997, the respondents filed a motion to dismiss for want of prosecution. An Administrative Law Judge entered an Order of Dismissal on August 8, 1997, citing A.W.C.C. Rule 13 and Ark. Code Ann. § 11-9-702 (a)(4). It is stipulated that no hearing was held on the motion to dismiss.

On August 30, 2004, the claimant’s present attorney filed a request for a change of physician and asked for a hearing. The respondents objected, citing the order of dismissal and the statute of limitations. In the prehearing conference, the claimant contended that the dismissal order was invalid for lack of a hearing, in light of the Court of Appeals’ recent decision in *Dillard v. Benton County Sheriff’s*

Office, __ Ark. App. __, __ S.W.3d __ (Sept. 22, 2004).

Arkansas law limits the time in which a claim for compensation may be filed.

The relevant statute of limitations states in pertinent part:

A claim for compensation for disability on account of an injury, other than an occupational disease and occupational infection, shall be barred unless filed with the Workers' Compensation Commission within two (2) years from the date of the compensable injury. If, during the two-year period following the filing of the claim, the claimant receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter.

ARK. CODE ANN. § 11-9-702 (a)(1). It is the burden of the claimant, not respondents, to prove that a claim for compensation has been timely filed. *Aluminum Comp. Of America v. Rollon*, 76 Ark. App. 240, 64 S.W.3d 756 (2001).

The claimant contends that respondents initially provided her with medical treatment, while the respondents assert that no medical treatment was ever provided. The parties have introduced no evidence to settle this question. Though the Form AR-1 does identify a treating physician, I cannot determine whether the claimant actually saw this doctor for treatment. It may be that this was merely the doctor to whom the respondents referred the claimant, and she chose not to see this doctor. I cannot determine whether the claimant received medical treatment for this injury without resorting to speculation and conjecture, and such can never

substitute for credible evidence. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Neither party contends that the claimant ever received weekly benefit compensation, and nothing in the record indicates otherwise.

I find that the claimant has failed to prove by a preponderance of the evidence that she received, in the two-year period following the filing of her claim, any weekly benefit compensation or any medical treatment resulting from her alleged injury. As noted above, the statute provides that a claim for initial benefits is barred “If, during the two-year period following the filing of the claim, the claimant receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury.” ARK. CODE ANN. § 11-9-702 (a)(1). I conclude that this claim is therefore barred by the statute of limitations.

Whether this claim was validly dismissed appears to be irrelevant. Where a claim for initial benefits is filed but no benefits are paid through two years after the filing of the claim, the claim is automatically barred. ARK. CODE ANN. § 11-9-702 (a)(1). The statute does not require a hearing, or even an order of dismissal, for this bar to take effect. The plain language of the statute demonstrates that an initial claim for benefits will not toll the statute if no benefits are paid within two years of the filing of the claim. *Cf., Irwin v. Area Agency on Aging*, A.W.C.C. F005923 (Feb. 24, 2005); *Wadlow v. ConAgra Frozen Foods*, A.W.C.C. D609833 (July 9, 1997); *Brand v.*

Wayne Poultry, A.W.C.C. D916770 (June 22, 1994).

In making this finding, I note that the Court of Appeals has asserted in *dicta* that a change of physician request is by definition a request for additional compensation, and therefore a request sufficient to toll the statute of limitations. *Spencer v. Stone Container Corp.*, 72 Ark. App. 450, 38 S.W.3d 909 (2001). Nonetheless, in *Spencer* it was undisputed that the respondents had previously paid benefits on the claim in question. Such is not the case herein. Where an issue under consideration in the instant claim was not considered by the court in the case relied upon, what was said in *dicta* in the quoted case has no bearing on the instant claim. *Hutchens v. Bella Vista Village*, 82 Ark. App. 28, 110 S.W.3d 325 (2003).

AWARD

This claim is barred by the statute of limitations. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge