

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F500006

MARIA R. SOTO DE CORRAL	CLAIMANT
GEORGES PROCESSING, INC.	RESPONDENT
CROCKETT ADJUSTMENT INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 25, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by MARK FREEMAN, Attorney, Fayetteville, Arkansas.

Respondents represented by DAVID WALL, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 14, 2005, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on April 15, 2005. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On September 6, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her left wrist on September 6, 2002.

4. Medical expenses have been paid to July 2003.

5. The claimant is entitled to a compensation rate based on a forty-hour work week working at \$7.05 per hour entitling her to an average weekly wage of \$282.00.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional medical.
2. Permanent partial impairment of 12 percent.
3. Attorney's fees.
4. Statute of limitations defense.

In regard to the foregoing issues the claimant contends that the respondents are responsible for continued reasonable and necessary medical treatment as well as payment of the 12 percent PPI rating.

In regard to the foregoing issues the respondents contend that the claimant sustained a compensable injury on September 6, 2002. The respondents contend further that they provided the claimant appropriate workers' compensation benefits through June 5, 2003. The respondents contend that the Statute of Limitations provided for in Arkansas Code Annotative Sections 11-9-702 bars the claimant's request for additional benefits as of September 6, 2004. Since claimant's AR-C filing occurred no earlier than December 31, 2004, this claim is barred by Arkansas Code Annotative Section 11-9-702.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No.

1. The claimant submitted medical records marked Claimant's

Exhibit No. 1. The respondents submitted medical records marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified through an interpreter stating that she currently is unemployed. The claimant agreed that on September 6, 2002, she sustained a compensable injury while working for the respondent. The claimant explained that she slipped on a wet floor, fell and broke her left hand. The claimant testified that for her injury she was treated by Dr. Brian Benafield. The claimant agreed that she has had two surgeries on her hand and that there is a third surgery recommended. The claimant testified that she is afraid to have this third surgery because the second surgery did not turn out well. The claimant testified that when she last saw Dr. Benafield on June 5, 2003, she was still experiencing a burning feeling and that she has pain when either water or air or anything gets close to her hand. The claimant testified that this condition exists currently.

The claimant testified that she asked for a leave of absence from her work because her mother was ill but had to wait until her vacation to take off. The claimant testified that she went to Mexico in June 2003 to take care of her mother. The claimant testified that her mother passed away on October 1, 2003, while she was in Mexico. The claimant testified that she then began taking care of her aunt but that when she found out that her daughter had been hospitalized, she came back to the United States on November

19, 2004. The claimant testified that when she returned she started living with her daughter-in-law, Kelly Osborne. The claimant testified that when she returned Ms. Osborne started contacting the respondents to see what they could do to help her with her hand problem. The claimant testified that she also had Ms. Osborne contact Dr. Benafield's office to see if he could do anything to help her situation. The claimant agreed that she saw Dr. Benafield on January 25, 2005. The claimant testified that Ms. Osborne made the appointment for her and she also paid for this appointment. The claimant testified that after her compensable injury, the plant nurse made her doctor's appointment for her and had taken her to her appointments. The claimant testified that the nurse was taking her to the doctor twice a week for a period of time and then she stopped. The claimant testified that she told the plant nurse that her hand was not right and the nurse started taking her to the doctor again then she went to Mexico.

On cross examination, the claimant testified that all the time she was seeing Dr. Benafield she continued to work. The claimant testified that when she last saw Dr. Benafield on June 5, 2003, Dr. Benafield released her to full duty without restrictions. The claimant testified that after she was released from the doctor she continued to work for the respondent at full duty for approximately two weeks before she left to go to Mexico. The claimant testified that because she stayed longer in Mexico than her vacation time or leave of absence she lost her job with the respondent. The claimant testified that since she has come back to the United

States she cannot find a place to work because of her hand and thus has not applied for work. The claimant identified the Commission Form AR-C and stated that she could not read it but that she does identify her signature on that form with the date December 31, 2004, on it. The claimant was asked if she filled out the Form AR-C and she testified that she cannot write in English so someone else filled it out. The claimant testified that when she was initially injured the nurse filled out the paperwork for her. The claimant testified that following her injury, the plant nurse did everything for her. The claimant testified that when she continued to have problems she would go back to the plant nurse.

On redirect examination, the claimant agreed that she relied upon the nurse to set up her doctor's appointments. The claimant was asked that if after the last time she saw Dr. Benafield in June 2003 did she believe the nurse would set up another doctor's appointment for her, the claimant responded that she thought probably the nurse would if she came back to her. The claimant testified that she was unaware that she had received a 12 percent impairment from Dr. Benafield.

On recross examination, the claimant testified that if her daughter had not gotten ill she would have stayed in Mexico to continue caring for her aunt. The claimant testified that except for her daughter getting ill she would have stayed in Mexico even after her aunt passed away and helped in her sister's shop.

Kelly Osborne testified that she was engaged to the claimant's son and has been acquainted with the claimant since January 2002.

Ms. Osborne testified that she was aware that the claimant had broken her wrist and had had operations on her wrist. Ms. Osborne testified that she knew that the plant nurse for the respondent would take the claimant to her doctor's appointments. Ms. Osborne testified that she knows that this winter the claimant was seen by Dr. Benafield and that she had paid for the appointment. This witness testified that before the claimant left for Mexico the claimant did not tell her that she needed another doctor's appointment scheduled. Ms. Osborne testified that the claimant never scheduled appointments for herself anyway. This witness testified that when the claimant returned from Mexico she started calling the respondent trying to get in touch with the nurse. The claimant testified that then she was put in touch with Ron Scott at the workers' Compensation Commission and he made her aware that there was a statute of limitations. Ms. Osborne testified that while the claimant was in Mexico she made them aware that she was still having problems with her hand and wrist and it was still ultra sensitive and she was having trouble sleeping. This witness testified that the claimant did not tell her that she had a return appointment scheduled with Dr. Benafield at the time that she left for Mexico. Ms. Osborne testified that they received, in the mail, after the claimant had gone to Mexico that the claimant had missed her appointment but that she just disregarded it. Ms. Osborne testified that the claimant returned from Mexico on November 19, 2004. This witness was asked if she had undertaken to schedule an additional medical appointment to for the claimant prior to her

returning from Mexico and Ms. Osborne responded, "No." Ms. Osborne explained that the claimant returned during a medical emergency within the family involving the claimant's daughter in Chicago. Ms. Osborne testified that her attempts to call the respondent and the doctor's office occurred after November 19, 2004.

The medical records set forth that the claimant was seen by Dr. Benafield upon referral from Dr. Berestnev on September 9, 2002, for a fracture to the claimant's left distal radius. Dr. Benafield notes that the claimant's x-rays indicate that she has an extra articular distal radius fracture but is minimally displaced. Dr. Benafield writes on September 23 that he has seen the claimant for follow up after a recent percutaneous pinning of her distal radius fracture, noting that she is out of her splint that day and her pin sites are clean. Dr. Benafield writes on October 29, 2002, that the claimant's x-rays show good alignment and good callus formation at the fracture site. Dr. Benafield removed the claimant's pins and placed her in a removable wrist splint. Dr. Benafield writes on December 5, 2002, that the claimant has been removed from her wrist splint without complaints although she has some mild tenderness which is not unusual. The claimant's x-rays show that her fracture appears healed and this has not changed in appearance. Dr. Benafield recommended that the claimant go back to work without restrictions but that they will see her back in one month when she, hopefully, will have reached MMI. On January 16, 2003, Dr. Benafield writes that the claimant was seen for follow up of her left wrist fracture, noting that the claimant will not take

her removable splint off because she stays in continuous pain reporting that she has numbness and tingling over her index finger. Dr. Benafield notes that the claimant does have tenderness near the pin sites with a positive Tendals out to her fingers. The doctor notes that he is worried that she may have a causalgia type pain or reflex sympathetic dystrophy, noting that she has stiffness in her fingers and cannot make a fist. Dr. Benafield recommended physical therapy as well as Neurotin. The claimant was seen on February 17, 2003, and then again on April 8, 2003, with her continued complaints of left arm and hand pain. Dr. Benafield discussed and explained to the claimant exploration of her superficial radial nerve with either neurolysis or neuroma excision and nerve repair. Dr. Benafield writes on April 28 that he has seen the claimant for her follow up after her left superficial radial nerve exploration, noting that the pain is better but she still has some hypersensitivity. Dr. Benafield writes that he removed the sutures and that steri strips were placed and she was put in a splint as well as released to light duty. Dr. Benafield also recommended that she do home exercises. On June 5, 2003, Dr. Benafield saw the claimant for follow up of her left neuroma excision, noting that she still has symptoms from her incision and decreased sensation in the radial nerve distribution. Dr. Benafield writes that he thinks it is ok for her to go back to full duty without restrictions and recommended that she come back in six weeks. Dr. Benafield lastly writes on January 25, 2005, that he has not seen the claimant since June 5, 2003, which was approximately a year and a half ago. Dr.

Benafield writes that the claimant reports that she has had constant pain and hypersensitivity in the area of her superficial radial nerve since the surgery almost two years ago. Dr. Benafield writes that he thinks that the claimant shows some signs of classic reflex sympathetic dystrophy and recommended that she get to a pain specialist. Dr. Benafield assessed the claimant with a 12 percent upper left extremity impairment based on wrist flexion of 20 degrees and decreased light touch in the supervision radial nerve distribution. Dr. Benafield writes that the claimant's fracture pattern has a high chance of settling and losing its initial excellent orientation. Due to this, the doctor recommends a prophylactic pinning of the fracture to insure that it maintains its alignment.

In the Commission's file, there is an AR-C signed by the claimant on December 31, 2004, requesting benefits of permanent and total disability and additional permanent impairment.

Ark. Code Ann. §11-9-702(b)(1) sets forth that;

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 year of the date of the last payment of compensation or two years from the date of the injury whichever is greater.

After a review of this entire record, it appears to me that the claimant's claim for benefits should be barred by the statute of limitations. The record is clear that she sustained a compensable injury on September 6, 2002, and was afforded medical treatment for her injury up and through June 5, 2003. The claimant

testified that she voluntarily went to Mexico and stayed in Mexico until her return on November 19, 2004. The claimant filed her AR-C requesting benefits on December 31, 2004. The claimant has not indicated by her testimony that she received medical treatment for her compensable injury while in Mexico and at the time she last saw Dr. Benafield on June 5, 2003, she was released to full duty without restrictions. It was, however, recommended by Dr. Benafield that she return to see him in six weeks. Six weeks from the claimant's June 5, 2003, appointment would have been approximately July 17 or 18, 2004. Adding nothing to or taking anything away from the reading of Ark. Code Ann. §11-9-702, this claim should be barred by the statute of limitations. The claimant filed her request for additional benefits on December 31, 2004, which is clearly more than one year from the date she last received medical treatment for her compensable injury and more than two years from the date of her compensable injury. Therefore, this claim for benefits should be barred by the statute of limitations.

#### FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On September 6, 2002, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury to her left wrist on September 6, 2002.
4. Medical expenses have been paid to July 2003.

5. The claimant is entitled to a compensation rate based on a forty-hour work week working at \$7.05 per hour entitling her to an average weekly wage of \$282.00.

6. Based on Arkansas law, this claim should be barred by the statute of limitations. See Ark. Code Ann. §11-9-702(b)(1). Also see discussion above.

ORDER

This claim is barred by the statute of limitations. Therefore, this claim for benefits should be denied in its entirety.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE