

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F305004**

**VICTORIA G. HOLLAND, EMPLOYEE**

**CLAIMANT**

**BAXTER HEALTHCARE, INC., EMPLOYER**

**RESPONDENT**

**AMERICAN MANUFACTURING INSURANCE  
COMPANY, CARRIER**

**RESPONDENT**

**OPINION FILED JANUARY 27, 2005**

A hearing in this case was conducted on November 9, 2004, before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, at Mountain Home, Baxter County, Arkansas.

Claimant was represented by Frederick R. Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents were represented by Tom Harper, Jr., Attorney at Law, Fort Smith, Arkansas.

**STATEMENT OF THE CASE**

A prehearing telephone conference was held on this claim on July 20, 2004; a Prehearing Order was filed in this matter on July 22, 2004. A copy of the Prehearing Order was admitted into the record as Commission Exhibit #1.

The parties agreed to six stipulations. Three of these stipulations are set forth in the Prehearing Order and were confirmed, or confirmed as amended, by the parties at the start of the hearing. The parties agreed to the other stipulations at the hearing. The stipulations that follow are hereby accepted.

1. The employee-employer-carrier relationship existed on November 11, 1981; on December 4, 2002; and at all other relevant times.

2. Claimant suffered a compensable injury on November 11, 1981.

3. After Claimant's November 11, 1981 compensable injury, Dr. Charles Ledbetter assigned her a 20% impairment rating; Dr. William Blankenship then assigned Claimant a 5% impairment rating; Respondents accepted and paid benefits based upon the permanent impairment rating of 5% to the body; these benefits were paid in full in 1983.

4. As of November 11, 1981, Claimant's compensation rate was \$139.20.

5. As of December 4, 2002, Claimant's temporary total disability rate was \$366.00, and her permanent partial disability rate was \$275.00.

6. Respondents did not list Claimant's co-worker, whose last name is "Collins," in their response to Claimant's discovery requesting the names of all persons who would have any knowledge of the facts.

At the November 9, 2004 hearing, the parties discussed the issues set forth in the Prehearing Order. The parties agreed that the issues to be litigated and resolved are limited to the following:

1. Whether Claimant is entitled to additional benefits for the November 11, 1981 compensable injury.

2. Whether Claimant suffered a compensable specific incident injury on December 4, 2002, or in the alternative, whether Claimant suffered a compensable gradual onset injury in 2002.

3. Whether the statute of limitations bars payment of any additional benefits on the November 11, 1981 injury or the December 4, 2002 injury.

4. Whether Claimant is entitled to reasonably necessary medical benefits.

5. Whether Claimant is entitled to temporary total disability benefits.

6. Whether Claimant is entitled to payment of an attorney's fee.

The parties agreed that issues 7 and 8, listed in the Prehearing Order, have been withdrawn and need not be determined.

Claimant contends that she is entitled to additional benefits based upon her November 11, 1981 compensable injury. She further contends that she sustained either a compensable specific incident injury on December 4, 2002, or a gradual onset injury some time in 2002. She seeks medical benefits, temporary total disability benefits, and an attorney's fee based upon her alleged 2002 injury. Respondents contend that Claimant did not sustain an injury in 2002. They argue that the only injury reflected in the record is the November 11, 1981 compensable injury. Therefore, Respondents contend, any benefits sought by Claimant at this point are barred by the statute of limitations.

### **DISCUSSION**

Adjudication of this claim turns on the second and third issues raised by the parties. After a discussion of the factual background, this opinion will address those two issues in the order presented.

On November 11, 1981, Claimant was standing near a sheeting or film line where plastic was being rolled up on a core. Her lab jacket somehow got caught up in this process, and Claimant began to be pulled up by her jacket into the film line; she was actually lifted up off the ground. Claimant was jerking and pulling back when another employee hit the emergency switch, at which point Claimant fell and hit her neck on a metal track. Claimant sustained two fractured ribs, whiplash of the neck, and multiple abrasions and contusions of her upper arm, back, and neck area.

Claimant received medical treatment for her injury. In a letter dated December 15,

1981, among other observations Dr. Charles Ledbetter opined that “[i]t is my impression this lady has either a soft cervical herniated disc, or at least, a disc injury of the cervical spine, probably affecting the C5 or C6 root....” Claimant did not undergo surgery. On May 25, 1982, Dr. Ledbetter assigned Claimant an impairment rating of 20% to the whole body. Claimant was subsequently examined by Dr. William Blankenship; on September 28, 1982, he assigned Claimant a 5% impairment rating to the whole body. As stipulated by the parties, Respondents accepted this last rating and paid it in full in 1983.

\_\_\_\_\_The record does not reflect any disability benefit payments by Respondents, related to Claimant’s November 11, 1981 compensable injury, after 1983. As to medical benefits, the last medical record pertaining to Claimant’s 1981 injury is Dr. Blankenship’s September 28, 1982 report containing his 5% impairment rating. The next medical records in evidence are dated in November of 1994. This suggests that Claimant was not furnished with medical services related to her claim for twelve years. Her testimony at the hearing confirms this.

Q. It looks like, from 1981 up to the present, you’ve had fairly consistent chronic neck pain. Is that a fair statement?

A. Oh, I don’t recall going to the doctor with the neck pain until later on. In, probably, the ‘90s.

Q. Okay. These reports kind of show your treatment trailed off in 1982, and then started back up, in earnest, in 1994. Is that what you’re talking about?

A. Yes, probably.

After her November 1981 compensable injury, Claimant returned to work for the respondent employer. At some point she transferred to the blending department, which makes the powder used to produce the plastic. Claimant worked in blending for almost ten

years, and then went to work on the film line. Claimant explained why she transferred from blending to the film line: "I decided to take it because of the repetitiveness back there [in blending] running a fork truck. Because I had to go behind -- behind you, to drive it, and it got to where I was in lots of pain from that. So I bid to the film line." In blending, Claimant could divide her time "about half and half" between sitting and standing.

Q. Okay. What was repetitive about the blender job?

A. Well, the fork truck driving.

...

Q. Okay, explain to us what's repetitive about the fork lift job, if you will.

A. Because you're on that fork lift, and you're driving it constantly. And it's on and off, possibly stamping bins or putting labels on bins and stuff like that. But you're up and down on that fork lift, constantly, for that either four to six hours.

Claimant did not identify any other repetitive activity involved in her job in blending.

Claimant then moved to the film line.

I sacked rolls, and, of course, we had to clean up the machine and stuff. And I had a male in there that was working with me, and he did all the heavier lifting, because I was afraid of hurting myself, so I tried not to do any more than I had to, as far as the heavy stuff.

Claimant testified that "we sacked up the film, which was usually two, maybe three, four, five rolls" weighing from twenty-five to one hundred pounds. After putting plastic on the film rolls, they would be rolled into a warehouse, and then placed on a pallet. The film line was running at a certain speed, and Claimant and her fellow employee had to keep up with that speed. "It took like eight to ten minutes to run a roll." They also kept up with paperwork and machine adjustments.

After working for about a year and a half on the film line, Claimant was transferred

to the pelletizer. She described the pelletizer job:

That's the one that's back on the fork truck again. We was having to lift them -- they had the great big Gaylord boxes, they was about eighty pounds. We had to move them around and pull them apart and make them.

She began working in this department on December 3, 2002.

Q. Okay. And what happened on December 4th of '02 that you know that you had an injury?

A. When I was making the boxes, why I felt something pull. But I just thought I'd pulled myself. Because, I mean, I've had all that problem and stuff, so I couldn't really tell, you know.

Q. You felt something pull. Where was it that you felt something pull?

A. In my neck.

Q. Did you tell anybody about it?

A. No.

Q. When did you next tell anybody about it?

A. When I went back -- after I went to the doctor. I had an appointment on the 6th, and whenever I was so sick, after that, on the 5th and 6th, I decided that it wasn't just a pull. That I had really hurt myself.

Claimant has not worked at any job since December 4, 2002.

The medical records contained in Respondent's Exhibit #1 reveal that Claimant first complained of headaches on October 20, 1995; such complaints became more routine in 1999. In a medical record dated January 31, 2001, Claimant stated "that the headaches start in the back of the neck and come up the head." A medical record dated February 26, 2001 relates Claimant's complaints of "myofacial discomfort," while a medical record dated March 27, 2001 raises the possibility of fibromyalgia.

A medical record dated July 26, 2001, combines several of Claimant's earlier

complaints. A physical therapist's note dated October 9, 2001 reiterates these complaints.

The patient complains today that she has experienced headaches that radiate from her posterior cervical spine superiorly to her skull. This pain also radiates from the neck to the left shoulder and elbow over the last two months. The patient states she has worked as a forklift driver for the last ten years which requires great physical effort as far as turning, leaning, reaching and so forth performing repetitive motions up to four hours without a break.

This record, although assigning the wrong date, notes Claimant's November 1981 injury. It also records: "Date of Onset: Gradual." After twelve sessions of physical therapy, Claimant was discharged on September 20, 2001; the physical therapist noted: "She no longer has pain in the cervical spine." However, Claimant returned to the doctor on October 18, 2001, "with complaints of her pain from fibromyalgia." Claimant's headaches continued, and on January 11, 2002, she complained of "near constant neck pain."

Claimant underwent an MRI scan of her cervical spine on January 18, 2002. The report noted "[s]evere degenerative changes...." The following impression was recorded:

Markedly abnormal cervical spine, as discussed above. This involves both the bone marrow of C5 and C6, as well as the disc spaces at the C3-4, C4-5, and C5-6 levels. The odontoid is also involved in this. This raises the question of rheumatoid arthritis versus a metastatic process or just severe degenerative changes with an acute process overlying it. There is, what appears to be, a herniated nucleus pulposus, or certainly large bony spurring, associated with this area at the C5-6 level, slightly eccentric to the left. This does cause central canal narrowing, as well as neuroforaminal narrowing at the C5-6 level. There is also central canal narrowing at the C3-4 and C4-5 levels secondary to the degenerative disc disease and bony spurring.

On May 9, 2002, Dr. David Kent interpreted this study as showing "a significant amount of disc as well as osteoarthritic changes and suggestion of some further destructive reflections about the odontoid."

Subsequent medical records are somewhat repetitive of the foregoing findings. Dr.

Thomas Briggs opined on March 6, 2002 that Claimant “has a chronic, progressive neck pain. She also has cervical spondylitic disease....” On April 11, 2002, Dr. Kent wrote:

I think we have certainly spinal osteoarthritis, some hypersensitivity and myofascial pain in the upper extremities with a hint of fatigability, sleep disturbances, restless leg and hypersensitivity about the skin with intermittent exacerbations. It is somewhat reflective of fibromyalgia, but at this time this is just a working diagnosis.

Dr. Kent also noted “the essentially mild degenerative joint disease on cervical spine x-ray that was done....” Dr. Kent’s May 23, 2002 clinic note records the following impression:

1. Severe C-spine arthritis with some canal and foraminal narrowing.
2. Intermittent upper extremity radicular pain.
3. Myofascial pain throughout the neck and shoulder on the left.
4. Possible left thoracic outlet syndrome.

Dr. Kent’s July 18, 2002 rehabilitation clinic note acknowledges “the significant multilevel osteoarthritis of her spine” and lists the medications prescribed to Claimant. Clinic notes for August 29, 2002 and October 3, 2002 record similar impressions.

Dr. Kent’s November 14, 2002 clinic note is his last medical record preceding Claimant’s alleged December 4, 2002 injury. He recorded the following history:

The patient comes to the clinic to follow up on her chronic pain in her neck and shoulder area as well as paresthesias in bilateral upper extremities, worse on the left.... She says her good and her bad days are about 50/50. She is really beginning to consider whether she should make application for disability. Work is getting pretty difficult to tolerate.

The following impression was recorded:

1. Osteoarthritis, degenerative disease of the cervical spine.
2. Myofascial pain through the shoulders and neck.
3. Rule out metabolic or autoimmune component to pain.

Dr. Kent adjusted the Claimant’s medications and “talked with [Claimant] today about long-term advisability of work versus pursuing her disability benefits.”

An MRI scan of Claimant's cervical spine was performed on November 21, 2002. It noted "degenerative disk disease with osteophyte formation at multiple levels especially impressive at C5-6 and to a lesser degree at C4-5.... A soft tissue disc herniation is not definitely seen."

Even after her alleged December 4, 2002 injury, Claimant's medical treatment did not change.

Q. According to the medical reports from, say, 1994 through 2004, your pain got progressively worse. You[r] neck pain, is that correct?

A. Yes.

Q. How did your -- it looks to me like your treatment was the same before December, '02, as it was after. Is that correct?

A. No. The milligrams of stuff went up on all my medications.

Q. So your medication amounts, dosages, were increased?

A. Yes.

Q. But your treatment was virtually the same.

A. Yes.

Claimant's testimony is verified by the medical reports.

Dr. Kent's December 6, 2002 report to employer notes that Claimant was seen for "Periodic Exam"; the entry "Work related injury/illness" is not marked. Dr. Kent did opine that Claimant was unable to work. In his clinic note of that same date, the following history is recorded:

The patient comes to follow-up on her chronic neck and shoulder pain, upper extremity paresthesias. She states that she has unfortunately been moved to a more physically demanding work assignment in her place of employment, and she is just really having a difficult time managing.

Dr. Kent recorded an impression substantially the same as recorded prior to Claimant's December 2002 incident. This note, as well as Dr. Adkin's reports dated December 9, 2002, January 14, 2003, and February 10, 2003, all fail to record any mention of an injury on December 4, 2002. Dr. Briggs did not record any report of an injury in his office report dated March 5, 2003. Dr. Kent did not mention any injury in December 2002 in his March 6, 2003 report. Dr. Kent's report to employer of April 10, 2003 again notes that Claimant is seen for "Periodic Exam," not "Work related injury/illness."

Subsequent medical records fail to mention an injury involving Claimant in December 2002. Subsequent impressions, such as Dr. Kent's May 15, 2003 and July 17, 2003 impressions, are substantially similar to those found in Claimant's pre-December 2002 medical records. On March 2, 2004, Dr. Adkins assessed "chronic cervical pain/cervicalgia secondary to degenerative disc disease." Dr. Kenneth Tonymon's May 5, 2004 letter only records a history of Claimant's November 1981 injury; there is no mention of an injury in 2002.

Claimant underwent cervical spine x-rays on May 5, 2004. This study found that "[m]oderate degenerative disc disease is present at C4-5 and C5-6 with moderate anterior spurring and moderate loss of disc height.... No soft tissue abnormalities are evident." It recorded this impression: "Moderate degenerative disc disease at C4-5 and C5-6 with normal motion on flexion and extension." Dr. Tonymon reviewed these findings on June 3, 2004, and noted: "[Claimant] reports no problems prior to her accident ten years ago that brought about these symptoms."

On April 8, 2004, Dr. Adkins completed a form for Claimant's counsel that makes reference injuries in "1981 then 12/3/02." He cited herniated nucleous pulposis and bony

spurring as objective findings. However, on June 14, 2004, in response to questions from Respondent's counsel, Dr. Adkins elaborated on Claimant's history. After first noting her November 1981 compensable injury, he wrote:

If there was significant enough injury to the bones in the neck, inflammation occurs. Inflammation causes irritation to the bones, which then causes deformities of the bones. These deformities cause spurs and arthritis. It appears this is when all of her problems initially started.

...

It was not my intent that the two days of work caused cervical arthritis, but it very well may have aggravated any degenerative disease that was present due to a previous accident, possibly even the one in 1981. However, by looking at the chart, it does appear that the patient complained of pain continuously from 1981 until now. It only became a consistent problem starting in approximately 2001, but the patient stated that those two days of work caused increasing discomfort and, to my knowledge, there was no reported injury on December 3, 2002, or December 4, 2002. It is my opinion that the injury in 1981 probably started the cascade of inflammation, which developed into arthritis. The job performed on December 3 and 4, 2002, may have inflamed the arthritis causing increasing pain.

Another record seems to confirm that Claimant's current problems are related to her 1981 injury. At the hearing, Claimant affirmed that she filled out a Form N on December 9, 2002, but decided not to file the form; this form is contained on page 11 of Respondent's Exhibit #2. The form gives the date of accident as December 3, 2002. It lists the cause of injury as follows: "Stress on old injury; making boxes, driving fork truck; putting air bag in truck, banding boxes." The form does not mention any kind of a pull on December 4, 2002; it appears to be signed by Claimant.

Lisa Cakora, Claimant's former neighbor who is a registered nurse, testified to Claimant's increased pain and worsened condition following her December 2002 injury; however, she acknowledged that arthritis sufferers tend to get worse rather than better over time. Claimant's husband, Gary Holland, also testified to Claimant's increased pain

and worsened condition. He recalled that, after Claimant was transferred to the pelletizer, “she came home, that first night... she told me that she had hurt herself, and that she could not do the job.”

Gail Bruggeman, retired from her position as a nurse with the respondent employer, confirmed her authorship of a memo found at page 11a of Respondent’s Exhibit #2. The memo is dated December 6, 2002. It reports that Claimant presented to Bruggeman complaining of pain in her neck, back, and shoulders, and that she could not do the job on the pelletizer. It notes: “[Claimant] has been dealing with this pain for some time. She had an injury back in 1982. She feels her problems now are from that old injury.” It also notes Claimant’s decision not to file for workers’ compensation benefits at that time.

Current employees of the respondent employer testified. Rocky Pemberton, assistant supervisor over the pelletizer department, testified that Claimant did not report a specific injury to him. Amy Thalmueller, a registered nurse, testified that during two conversations with Claimant on May 21, 2003, Claimant only mentioned her old neck injury, and did not refer to an injury in December 2002. Douglas Rucker, plastics manager, testified that Claimant “has -- you know, at different points in time, has complained about her back and neck hurting, whatever. But, as far as any incident after going back to this [pelletizer] job, I do not recall any specific time.”

**A. Compensability**

Claimant argues that she sustained a compensable specific incident injury on December 4, 2002. In the alternative, Claimant contends that she sustained a compensable gradual onset injury in 2002.

## 1. Specific Incident Injury

Claimant must prove that she sustained a compensable injury as defined by Ark. Code Ann. § 11-9-102(4)(A)(i). Among other requirements, Claimant must prove “[a]n accidental injury causing internal or external harm to the body....” Id. Claimant must sustain her burden of proving a compensable injury by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i). “Preponderance of the evidence” means evidence of greater convincing force; the term does not mean preponderance in amount, but implies an overbalancing in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, \_\_\_ (1947).

I find that Claimant did not sustain her burden of proving that she suffered a compensable specific incident injury on December 4, 2002. The evidence of greater convincing force establishes that Claimant’s condition preexisted this date, and that it remained substantially, if not exactly, the same after this date. Claimant admitted upon cross-examination that her treatment was virtually the same before and after December 4, 2002. Claimant’s medical records following December 4, 2002, do not contain a report of an injury on that date. The unfiled Form N that Claimant completed on December 9, 2002, found on page 11 of Respondent’s Exhibit #2, makes reference to “stress on old injury,” but does not detail a “pull” or other injury on December 4, 2002. In short, the evidence of greater convincing force establishes that Claimant did not suffer an accidental injury causing physical harm on December 4, 2002; rather, she continued to manifest symptoms stemming from her original November 1981 compensable injury.

In addition, Claimant must establish her compensable injury by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). “Objective findings” are

those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i).

Even if the preponderance of the evidence established that an incident occurred on December 4, 2002, I find that Claimant did not sustain her burden of establishing her injury by medical evidence supported by objective findings. A comparison of Claimant's January 18, 2002 and November 21, 2002 MRI studies with her later May 5, 2004 study reveals that her cited objective findings preexisted her alleged injury on December 4, 2002. Dr. Adkins' April 17, 2003 letter details the objective findings revealed by the two 2002 studies, both conducted prior to December 4, 2002. Claimant's objective findings remained consistent throughout this period; there are no new objective findings after December 4, 2002.

## 2. Gradual Onset Injury

Claimant must prove that she sustained a compensable injury as defined by Ark. Code Ann. § 11-9-102(4)(A)(ii)(a). Among other requirements, Claimant must prove that her injury is "[c]aused by rapid repetitive motion." *Id.* There is a two-part test for analyzing whether an injury is caused by rapid repetitive motion: (1) the tasks must be repetitive, and (2) the repetitive motion must be rapid. Westside High School v. Patterson, 79 Ark. App. 281, 284, 86 S.W.3d 412, \_\_\_ (2002). "Arguably, even repetitive tasks and rapid work, standing alone, do not satisfy the definition. The repetitive tasks must be completed rapidly." Malone v. Texarkana Public Schools, 333 Ark. 343, 350, 969 S.W.2d 644, \_\_\_ (1998). Claimant must sustain her burden of proving a gradual onset injury by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(ii).

I find that Claimant has not sustained her burden of proving by a preponderance of the evidence that she sustained an injury caused by rapid repetitive motion. Claimant's

tasks in the blending department are somewhat varied. Being “up and down on that fork lift, constantly,” interspersed with periods of driving or other activity, does not appear to be repetitive as that term is understood in workers’ compensation law. See Westside High School, 79 Ark. App. at 284, 86 S.W.3d at \_\_\_\_\_. While Claimant’s tasks on the film line required her to work at a certain pace, her testimony does not establish that her tasks were repetitive. Claimant’s testimony indicates that her work for the respondent employer had to be performed promptly, but the evidence of greater convincing force does not establish that her tasks were repetitive or that her repetitive motions were rapid.

**B. Statute of Limitations**

Claimant seeks additional compensation for her November 11, 1981 compensable injury.

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). The furnishing of medical services constitutes “payment of compensation” within the meaning of the limitations statute, and such payment of compensation or furnishing of medical services tolls the running of the time for filing a claim for additional compensation. Plante v. Tyson Foods, Inc., 319 Ark. 126, 129, 890 S.W.2d 253, \_\_\_\_ (1994). The one year limitations period begins to run from the last payment of compensation, which has been held to mean from the date of the last furnishing of medical services. Id. at 129, 890 S.W.2d at \_\_\_\_\_.

I find that Claimant’s request for additional compensation related to her November 11, 1981 compensable injury is barred by the applicable statute of limitations. The parties

stipulated that Claimant received her last payment for benefits based upon her 5% permanent impairment rating in 1983. There are no medical records in evidence from September 28, 1982 until November of 1994, which indicates that Claimant was not furnished with medical services during this period. Claimant agreed that her treatment trailed off in 1982 and then started back up in 1994. Because (1) no disability benefits were paid after 1983, (2) there is a twelve-year gap in the provision of medical services to Claimant from 1982 to 1994, and (3) Claimant did not testify to the payment of any compensation or furnishing of medical services otherwise, I am compelled to find that her claim for additional benefits related to her November 11, 1981 compensable is barred by the statute of limitations.

### **C. Remaining Issues**

Given the foregoing resolution of the second and third issues raised by the parties, it is not necessary to discuss the remaining issues in detail. As to the first issue, Claimant's entitlement to additional benefits for her November 11, 1981 compensable injury is moot, because the statute of limitations bars her claim in the first instance. Likewise, Claimant is not entitled to medical benefits, temporary total disability benefits, or an attorney's fee; she did not prove either a specific incident injury on December 4, 2002, or a gradual onset injury in 2002. Because Claimant failed to establish by a preponderance of the evidence one of the requirements for establishing the compensability of the injury alleged, she failed to establish the compensability of her claim and compensation must be denied. See Reed v. Conagra Frozen Foods, Full Workers' Compensation Commission Opinion filed February 2, 1995 (E317744). Without an initial finding of compensability, Claimant cannot be awarded temporary total disability benefits

or medical treatment. See Cross v. Magnolia Hosp. Reciprocal Group, 82 Ark. App. 406, 109 S.W.3d 145 (2003); see also Ark. Code Ann. § 11-9-102(4)(F)(i).

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer-carrier relationship existed on November 11, 1981; on December 4, 2002; and at all other relevant times.
3. Claimant suffered a compensable injury on November 11, 1981.
4. After Claimant's November 11, 1981 compensable injury, Dr. Charles Ledbetter assigned her a 20% impairment rating; Dr. William Blankenship then assigned Claimant a 5% impairment rating; Respondents accepted and paid benefits based upon the permanent impairment rating of 5% to the body; these benefits were paid in full in 1983.
5. As of November 11, 1981, Claimant's compensation rate was \$139.20.
6. As of December 4, 2002, Claimant's temporary total disability rate was \$366.00, and her permanent partial disability rate was \$275.00.
7. Respondents did not list Claimant's co-worker, whose last name is "Collins," in their response to Claimant's discovery requesting the names of all persons who would have any knowledge of the facts.
8. Claimant did not sustain her burden of proving by a preponderance of the evidence that she suffered a compensable specific incident injury on December 4, 2002. Claimant's medical condition and treatment were substantially the same before and after December 4, 2002. Her medical records following this date do not report an injury on that date; her unfiled Form N completed on December 9, 2002, makes reference to her "old injury" but does not detail an injury on December 4, 2002. Even if Claimant established

that an incident occurred on December 4, 2002, there are no new objective findings after that date that establish her compensable injury.

9. Claimant did not sustain her burden of proving by a preponderance of the evidence that she suffered a compensable gradual onset injury in 2002. The testimony does not establish that Claimant's tasks in the blending department and on the film line were sufficiently repetitive, or that her repetitive motions were rapid. Her tasks in the blending department are varied. Her tasks on the film line also appear to be varied, and the record does not establish that they were performed rapidly.

10. Claimant's request for additional compensation related to her November 11, 1981 compensable injury is barred by the statute of limitations, because no disability benefits were paid after 1983, there is a twelve-year gap in the provision of medical services from 1982 to 1994, and Claimant did not testify to the payment of any compensation or furnishing of medical services otherwise.

11. Because the statute of limitations bars Claimant's claim for additional benefits related to her November 11, 1981 compensable injury, it is not necessary to discuss her entitlement to those benefits.

12. Because Claimant failed to prove a compensable injury in 2002, it is not necessary to discuss her request for medical benefits, temporary total disability benefits, or an attorney's fee.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, the above claim is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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D. FRANKLIN AREY, III,  
Administrative Law Judge

DFA/ml