

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E814675

GROVER HORNADAY, EMPLOYEE	CLAIMANT
MAD BUTCHER, INC., EMPLOYER	RESPONDENT
LUMBERMEN'S MUTUAL CASUALTY, INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 9, 2005

Hearing held before the HONORABLE DALE DOUTHIT, Administrative Law Judge, August 24, 2005, at Fordyce, Dallas County, Arkansas.

Claimant, of Fordyce, Arkansas, appeared Pro Se.

Respondents were represented by HONORABLE COLIN P.WALL, for the firm, REIVES, RUBENS & MAYTON, of Little Rock, Arkansas.

STATEMENT OF THE CASE

On August 24, 2005, the above-captioned claim came on for a hearing in Fordyce, Arkansas. The hearing was limited to determine whether the respondents' Motion to Dismiss, filed June 21, 2005, had merit.

A copy of the respondents' Motion to Dismiss and Brief in Support, was introduced into the record as Respondents' Exhibit 2, at pages 15-21. The claimant's response to Respondents' Motion to Dismiss was introduced into the record as

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Respondents Exhibit 2 at page 23. The claimant appeared pro se and had previously been instructed of the ramifications of proceeding pro se as evidenced at page three of Respondents' Exhibit 2.

At the hearing, the respondents argued that the above-captioned claim should be barred by the statute of limitation pursuant to A.C.A. §11-9-702(b)(1) and/or dismissed pursuant to A.C.A. §11-9-702(d).

DISCUSSION

The facts concerning this claim were basically undisputed at the hearing of August 24, 2005. The claimant had sustained a compensable heart injury on or about September 16, 1998. According to the claimant, sometime after his 1998 injury his cardiologist put a ring in his heart and recommended he come back once a year to make sure it was still in place. The parties agreed at the hearing that the claimant had gone in for his annual checkup on January 25, 2001. (RX 1). The parties also agreed that the claimant did not treat again until January 29, 2002, regarding his 1998 compensable injury. After the January 29, 2002 doctors visit, the claimant's next treatment was May 1, 2003. (RX 1) The claimant testified he agreed with the dates of treatment as recited above.

After the May 1, 2003 checkup the respondents refused to pay the bill. On December 31, 2003, the claimant sent a handwritten letter to the Commission wanting to "appeal" the carrier's decision in stopping payment on the medical bills. On February 2,

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2004, claimant filed a written request for a hearing, but stated he was being deployed for 18 months and wanted the hearing delayed until he returned. On June 21, 2005 the respondent filed the now pending Motion to Dismiss, and the claimant responded to the motion on July 5, 2005.

The claimant argued that although he agrees with the dates of treatment, that he was unaware of the one year statute of limitations outlined in A.C.A. §11-9-702(b)(1), The claimant further argued that the respondent carrier should have notified him of the one year statute of limitations regarding additional benefits. I know of no precedent that requires a carrier to notify a claimant of applicable statute of limitations periods. Additionally, claimant's ignorance of the law is not a valid defense.

Still, when applying the applicable case law to §11-9-702(b)(1), this fact situation creates a close call regarding the Statute of Limitations. The court, in **Plante v. Tyson Foods, Inc.**, 44319 Ark. 126, 890 S.W. 2d 253 (1994), stated "we can think of no better illustration of medical services with respect to the provision of which an employer or carrier should have knowledge than follow-up treatment from an authorized surgery." When first reading that language from Plante, it leads one to assume follow-up treatment from an authorized surgery would be outside the statute of limitations. However, in Plante, the facts were substantially different from the case at hand. In Plante, the claimant actually went for treatment within the one year period, but the treating physician never

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billed the carrier for the treatment. Here, the claimant admits he never went for treatment between January 25, 2001 through January 29, 2002, or between January 29, 2002 through May 1, 2003. Additionally, in Plante the claimant was not billed for treatment in question because the treatment was considered included in the cost of the surgery. Here, the claimant was billed for each follow-up visit.

The Court in Plante went on to say “we are mindful that it is the claimant’s burden to act within the statutory time allowed.” **Superior Federal Savings & Loan Association v. Shelby**, 265 Ark. 599, 580 S.W. 2d 201 (1979) My reading of §11-9-702(b)(1) finds no provision that says just because the respondents should have known about the follow-up treatment that they are excluded from the one year statute of limitations. Clearly, the longer period for the statute limits would have been one year from the January 25, 2001 treatment; as two years from the compensable injury would have run in September of 2000.

The one year limitations period began to run from the last payment of compensation, which Superior Federal Savings & Loan Associates v. Shelby has held to mean from the date of the last furnishing of medical services; which in this case would have been January 25, 2001.

I realize the respondents paid for the 2002 & 2003 follow-up treatments; however, no claim can be revived by the provision of additional treatment once the statute

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has run. Evans v. Northwest Tire Service, 23 Ark. App. 11, 720 S.W. 2d 151 (1987).

Further, the claimant's deployment to Iraq had no bearing on this case. The claimant had not been deployed when the 2001, 2002, or 2003 treatment occurred, and the hearing concerning the motion-to-dismiss was delayed until well after the claimant's return from duty.

Therefore, when applying §11-9-702(b)(1), I find the statute of limitations ran one year from the January 25, 2001 date of treatment, or January 25, 2002. The claimant did not file a request for additional benefits until December 31, 2003, well after the statute of limitations had run; I therefore conclude that this claim is barred by the statute of limitations due to the claimant's failure to act within the one year statute of limitations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include documents and all other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe his demeanor, 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 claimant sustained a compensable heart injury on September 16, 1998.
- 3) A preponderance of the evidence shows that no

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compensation was paid to the claimant between January 26, 2001 and January 29, 2002.

- 4) The claimant filed his claim for additional benefits on December 31, 2003.
- 5) The statute of limitations, pursuant to A.C.A. §11-9-702(b)(1) ran in this claim on January 25, 2002.
- 6) The claim is therefore barred by the Statute of Limitations.

AWARD

As stated, it is the claimant's burden to act within the statutory time allowed. He failed to do so, and I must find that this claim is barred by the statute of limitations. Therefore, this claim is hereby denied and dismissed.

IT IS SO ORDERED.

DALE DOUTHIT
ADMINISTRATIVE LAW JUDGE

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