

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E707689

RICK H. KETCHUM, EMPLOYEE	CLAIMANT
PEERLESS CORPORATION, EMPLOYER	RESPONDENT
TRAVELERS PROPERTY & CASUALTY COMPANY OF AMERICA, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED MARCH 11, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on February 11, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant appeared, pro se.

Respondents represented by Mr. Robert H. Montgomery, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted February 11, 2005, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on January 12, 2005, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. Although the claimant contended at the prehearing conference that his average weekly wage was \$510.00, and that he may have been paid at an inappropriate compensation rate, based upon a wage statement provided to the claimant, the parties agreed that the claimant had been paid at the appropriate compensation

rates. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employee/employer/carrier relationship existed at all relevant times, including June 21, 1997; that the claimant sustained a compensable injury on said date; that respondents paid appropriate periods of temporary total disability, as well as a twelve percent (12%) impairment at the rates of \$300.00 per week for temporary total disability and \$225.00 per week for permanent partial disability; and that respondents had controverted all benefits beyond those previously paid.

By agreement of the parties, the issues to be presented for determination include:

1. Respondents' responsibility for outstanding medical treatment, together with continued medical treatment.
2. Whether the claim is barred by the Statute of Limitations.

Claimant contended, in summary, that his treating surgeon referred him to his primary care physician for follow-up medical treatment, including prescription medication; that respondents unjustifiably terminated all medical treatment; that he was entitled to follow-up medical treatment, including, but not limited to prescription medications.

The respondents contended that it had paid all appropriate benefits to which claimant was entitled. As an affirmative defense, respondents

maintained that the claim was barred by the Statute of Limitations. Alternatively, respondents contended that the bills submitted by Dr. Crawley were from an unauthorized treating physician.

In addition to the claimant, his wife, Kathy Ketchum, testified in his behalf. The record is composed solely of the transcript of the February 11, 2005, hearing containing numerous exhibits.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. Respondents last paid benefits on or before May 20, 2003. The claimant filed a claim for additional benefits on September 21, 2004.
4. The within claim for additional benefits is barred by the Statute of Limitations, specifically, A.C.A. §11-9-702(b).

#### DISCUSSION

The relevant facts in this case are undisputed. The record reflects that

respondents unilaterally terminated payment of all medical and related expenses, including prescription medications on or before May 20, 2003. It is further undisputed that the claim for additional benefits was filed by the claimant on September 21, 2004. Accordingly, any determination concerning whether the outstanding medical treatment is reasonably necessary or causally related to the June 21, 1997, injury is rendered moot because the claim is barred by time limitations imposed by A.C.A. §11-9-702(b).

The time for filing claims for compensation are set out in Ark. Code Ann. §11-9-702. It provides, in part:

(b) Time for Filing Additional Compensation. (1) In cases where any compensation, including disability or medical, has been paid on account of injury, the 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.

(2) The time limitations of this subsection shall not apply to claims for the replacement of medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus permanently or indefinitely required as the result of a compensable injury, where the employer or carrier previously furnished such medical supplies, but replacement of such items shall not constitute payment of compensation so as to toll the running of the statute of limitations. (Emphasis supplied)

A claimant may not toll the statute under subsection (b) merely by filling a prescription, since A.C.A. §11-9-508 specifically states that medication must be reasonably necessary for the injury sustained and what is considered reasonably necessary will depend on the facts and circumstances of each case. *Alred vs. Jackson ATL., Inc.*, 268 Ark. 695, 595 S.W.2d 249 (1980). The

furnishing, by an employer, of replacement medicine to an injured employee is payment of “compensation” and thus tolls the Statute of Limitations applicable to workers’ compensation claims. Further, “replacement medicine” is “medicine,” and, therefore, payment of replacement medicine is “payment of compensation” within the meaning of the subsection (b) of the aforementioned section. Furnishing of replacement medicine may toll the running of the statute, but, if more than one (1) year passes between furnishing of replacement medicine to a claimant, a claim for additional compensation may well be barred by statute because such claims are not revived once the statute has run. *Evans vs. Northwest Tire Service*, 23 Ark. App. 11, 740 S.W.2d 151 (1987), affirmed, 295 Ark. 264, 748 S.W.2d 134 (1998).

The burden is not on the carrier to find out whether medical treatments are continuing; rather, the burden is on the claimant to act within the time allowed to claim additional compensation. *Superior Federal Savings and Loan vs. Shelby*, 265 Ark. 599, 580 S.W.2d 201 (1979).

The claimant is an extremely nice gentleman. He sustained a significant, work-related injury on June 21, 1997, for which he was paid appropriate temporary total disability and permanent impairment for a scheduled injury. Respondents paid benefits until on or about May 20, 2003, at which time they advised the claimant that they would no longer voluntarily pay further benefits of any nature or kind. For unexplained reasons, the claimant waited more than

sixteen (16) months after respondents unilaterally terminated benefits before filing a claim for additional benefits. Under the holding in *Northwest Tire Service vs. Evans*, I am constrained to find that this claim is barred by the Statute of Limitations. Accordingly, the claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge