

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F410665**

**PAMELA A. LYNCH (FUGATE)**

**CLAIMANT**

**MUNRO & CO., INC.  
(SELF-INSURED)**

**RESPONDENT EMPLOYER**

**ORDER AND OPINION FILED NOVEMBER 17, 2005**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE RACHAEL R. ADLAND, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE ROBERT L. HENRY, III, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing on October 7, 2005, in Hot Springs, Arkansas. A prehearing conference was held and a prehearing order was filed on July 28, 2005. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an employer-employee relationship in 2000.

The claimant contends she sustained a gradual onset compensable injury and is entitled to medical benefits and temporary total disability benefits from October 5, 2004, through February 2005, and attorney's fees.

Respondents contend the claim has been controverted in its entirety and plead the statute of limitations. Further, respondents contend lack of notice and plead lack of causation.

## **ISSUES TO BE LITIGATED**

1. Compensability.
2. Medical benefits.
3. Temporary total disability benefits.
4. Statute of limitations.
5. Notice.
6. Attorney's fees.

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. There was an employer-employee relationship in 2000.
2. The preponderance of the evidence provides that the claim is barred by the applicable statute of limitations.

## **ORDER**

The claimant worked for the respondent employer from February 1988 until October 2004, in the positions of machine operator, repair operator and floor lady. The claimant contended that she suffered injuries to her hands while performing the machine operator job for 13-1/2 years from February 1988 through March 2000.

According to the claimant, she told her supervisors that she was having problems with her hands and that she needed to see a doctor and this was in the 1999 and 2000 time period. Mr. Fitzhugh, personnel manager, provided her with braces to wear on her hands while at work and at night. She did not get to see a doctor.

The claimant had worked as a floor lady for the past few years and on September 24, 2004, the foreman moved the claimant from her floor lady position back to a sewing machine operator position. The claimant made a doctor's appointment and called in each day and advised her employer she would not be back in until she saw the doctor on October 5, 2004. The claimant underwent some nerve conduction testing, was prescribed vitamin B6 and given hand braces by Dr. Timothy English. The claimant was terminated from her employer on October 4, 2004.

The claimant verified that she drew unemployment benefits for six months. By March 2005, the claimant was working part-time doing some janitorial services for a business but no longer worked there after April 14, 2005. At the time of the hearing, the claimant was working as a substitute teacher. The claimant verified that she had been able to work since leaving the respondent employer; however, she is looking for something she is able to do with a certain wage rate, at least \$9.00 per hour. The claimant verified that she signed and completed a Form AR-C and returned the form to the Workers' Compensation Commission on October 8, 2004.

Robert White, foreman for the respondent employer, testified that he had offered the claimant a sewing machine position in October 2004, but she complained of her hands and took off from work. Mr. White testified that she first complained of problems in 2000 and 2001, and again complained in August or September 2004. He would

simply send her to personnel for the manager to handle that part.

Respondents have denied the claim in its entirety and have first asserted the claim is barred by the statute of limitations. The claimant in the present case filed her claim on October 8, 2004. The Supreme Court has held that the time of injury means when an injury becomes compensable, not the date of the accident. *Donaldson v. Calvert-McBride Printing Co.*, 217 Ark. 625, 232 S.W.2d 651 (1950). Following the Supreme Court's 1950 decision, the Court of Appeals held that a claimant's injury did not become a compensable one until he suffered a loss of earnings. Disability, which is compensable under our statute, is based upon incapacity to earn because of injury. *Ark. La. Gas Co. v. Grooms*, 10 Ark. App. 92, 661 S.W.2d 433 (1983). For the purposes of commencing the statute of limitations under Ark. Code Ann. §11-9-702(a)(1), an "injury" is not to be construed as "compensable" until (1) the injury develops or becomes apparent and (2) the claimant suffers a loss in earnings on account of the injury. Thus, the statute of limitations does not begin to run until both elements of the rule are met. *Hall's Cleaners v. Wortham*, 311 Ark. 103, 842 S.W.2d 7 (1992).

Act 796 of 1993 provides that for purposes of statute of limitations, "the date of the compensable injury shall be defined as the date an injury is caused by an accident as set forth in Ark. Code Ann. §11-9-102(4)." However, this amendment did not address the injury date with regard to gradual-onset injuries, the very type presented in the present case.

The Supreme Court held in *Minnesota Mining Mfg. v. Baker*, 337 Ark. 94, 989

S.W.2d 151 (1999), that Arkansas is technically a “compensable injury” state and found that a scheduled injury does not become compensable until (1) the injury develops or becomes apparent, and (2) the claimant suffers a loss in earnings on account of the injury, which loss is conclusively presumed. Therefore, the statute of limitations with respect to scheduled injuries begins to run when the injury develops or becomes apparent to the claimant because the loss of wage earning capacity is conclusively presumed.

In the present case, the claimant became aware of her wrists problems in 1999 and 2000, when she was working on the sewing machines. The claimant received wrist braces to wear to help alleviate her problems but did not seek any medical attention until October 2004 and filed a claim with the Commission on October 8, 2004.

The claimant might argue that she did not actually become aware of her diagnosis of carpal tunnel until she was examined by Dr. English and underwent nerve conduction testing on October 7, 2004. However, a claimant’s awareness that her injury is causally related to the working environment is not an element of the inquiry. See, *Smith v. Aluminum Co. of Am.*, 78 Ark. App. 15, 76 S.W.3d 909 (2002). The testimony of both the claimant and the immediate supervisor of the claimant was that complaints of wrists pain were made in 1999 and 2000 and she was given wrist splints.

The Arkansas Court of Appeals in *Pina v. Wal-Mart Stores, Inc.*, \_\_\_\_ S.W.3d \_\_\_\_, \_\_\_\_ Ark. App. \_\_\_\_ (May 11, 2005), affirmed the Arkansas Workers’ Compensation Commission’s holding that the statute of limitations barred the claim since Ms. Pina made her initial complaints of wrists problems to her supervisor in October 1999 and did not file her claim for benefits until April 2002. I find the present

case very much on point with the facts in the *Pina* case.

In the present case, the statute of limitations began to run in 1999 and because the claimant's problems continued during 2000, while she remained on the sewing machines, the claimant's claim for benefits became time barred in 2002. While the claimant's workers' compensation claim may be meritorious, the time cannot be extended for her to file a claim. The burden of filing a claim within the statute of limitations is on the claimant. *Plunkett v. St. Francis Valley Lumber Co.*, 5 Ark. App. 195, 755 S.W.2d 240 (1988); *St. John v. Ark. Lime Co.*, 8 Ark. App. 278, 651 S.W.2d 104 (1983). I find the claim for benefits is barred by the applicable statute of limitations.

#### **ORDER**

The preponderance of the evidence provides that the claim is barred by the applicable statute of limitations. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL**  
**ADMINISTRATIVE LAW JUDGE**