

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E902208

OMA MYERS,
EMPLOYEE

CLAIMANT

RUSSELLVILLE PUBLIC SCHOOLS,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
TPA

RESPONDENT

OPINION FILED AUGUST 24, 2005

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Russellville, Pope County, Arkansas.

The claimant was represented by HONORABLE JAMES PATE, Attorney at Law, Russellville, Arkansas.

The respondents were represented by HONORABLE CAROL L. WORLEY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on June 8, 2005 in Russellville, Arkansas. A prehearing order was entered in this case on May 6, 2005. This prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or at the start of the hearing and are hereby accepted:

1. The parties will stipulate to the employer/employee relationship on 2/11/99, when claimant sustained a compensable injury to her right shoulder.
2. Claimant's average weekly wage was \$207.64, and her compensation rate is therefore \$138.00.
3. The claimant's attorney's letter addressed to Faydeane Gray of the Workers' Compensation Commission requesting a hearing in this case was filed with the Commission on September 3, 2003.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following in the prehearing order:

Claimant:

1. PPD rating and compensation.
2. Future wage loss.
3. Current and future medical bills.
4. Attorney's fees.
5. Statute of Limitations.
6. Waiver/estoppel.

Respondent:

1. Whether the statute of limitations has run with regard to this matter and, alternatively, claimant entitlement to additional benefits.

The record consists of the June 8, 2005 hearing transcript and the exhibits contained therein. In addition, I have "blue-backed" designate as part of the record Claimant's Post-Hearing Brief filed on July 20, 2005 and the Respondents' Post-Hearing Brief filed on July 8, 2005.

DISCUSSION

1. Evidentiary Objections

The respondents object to the admissibility of letters addressed from the claimant's attorney, James Pate, to Brenda Sellers, Senior Claims Representative of Management Claims Services dated November 19, 1999, April 20, 2001, and August 27, 2001 contained in claimant's proffered Exhibit No. 3. The November 19, 1999 letter advises Ms. Sellers of Mr. Pate's representation of Ms. Myers in her workers' compensation claim. The April 20, 2001 letter and the August 27, 2001 letter discuss settlement negotiations. The respondents object to the admissibility of Mr. Pate's letters on the grounds that correspondence from an attorney is considered hearsay, that the documents are not relevant

to any issue presented at the hearing, and that evidence of settlement negotiations should not be admissible. The claimant argues that the letters were not offered to establish the settlement value of the claim, but instead offered in support of legal theories of waiver and estoppel to demonstrate that the respondents knew that Ms. Myers had a valid workers' compensation claim. I find that Mr. Pate's November 19, 1999 letter is admissible to establish that Ms. Myers was represented by counsel at least as of that date. I find Mr. Pate's April 20, 2001 letter and his August 27, 2001 letter are admissible only to establish that a course of settlement negotiations was in progress in 2001.

2. Statute of Limitations

Ms. Myers sustained an admittedly compensable shoulder injury on February 11, 1999. The respondents paid a period of temporary disability compensation and medical benefits, and the respondents' last payment of medical benefits occurred on March 9, 2001.

Ark. Code Ann. § 11-9-702(B) provides:

TIME FOR FILING ADDITIONAL COMPENSATION. (1) 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.

In the present case, claimant did not file a claim or hearing request until September 3, 2003 with the Commission. Because this filing occurred more than two years from the date of the injury and more than one year beyond the date of the last payment of compensation on March 9, 2001, the present claim filed on September 3, 2003, was not timely filed within the limitations period contained in Ark. Code Ann. § 11-9-702(b).

3. Estoppel

In the present case, the claimant asserts that the respondents should be estopped from asserting the statute of limitations as a defense because when Ms. Myers completed paperwork for her employer immediately following the injury, her supervisor, Mr. Dickerson, advised her that "all the paperwork would be filed." [T. 22]. In fact, there is no dispute that the employer did forward the paperwork to the insurance company who initiated benefits, and the employer (or the insurance company) filed a Form 1 with the Commission as required by law under the circumstances of Ms. Myers' injury. However, as discussed previously, neither Ms. Myers or the employer filed a claim for benefits on Ms.

Myers' behalf with the Commission prior to the running of the statute of limitations in a claim for additional benefits.

The elements of estoppel, as set out in Snow v. Alcoa, 15 Ark. App. 205, 691 S.W.2d 194(1985) or as follows:

- (1) The party to be estopped must know the facts;
- (2) The party to be estopped must intend his or her conduct to be acted upon or must act so that the party asserting the estoppel has the right to believe the other party so intended;
- (3) The party asserting the estoppel must be ignorant of the true facts; and
- (4) The party asserting the estoppel must rely on the other party's conduct to his or her injury.

In the present case, I find that estoppel does not apply. The claimant's testimony establishes only, at most, that Mr. Dickerson advised her that he would take the actions necessary to submit her request for workers' compensation benefits, which he did when he sent her paperwork to the insurance company. As far as I can tell, Mr. Dickerson did not intimate that he was filing a claim with the Workers' Compensation Commission, and Ms. Myers had no right to believe that Mr. Dickerson was filing a claim with the Workers' Compensation Commission for the following reasons: First and most important, Mr. Dickerson never told

Ms. Myers that he was filing a claim with the Workers' Compensation Commission. Second, because the respondents accepted Ms. Myers' injury as compensable in 1999 when it occurred, there simply was no justiciable issue for which either Ms. Myers, or Mr. Dickerson on her behalf, would have reason to file any claim at that time with the Arkansas Workers' Compensation Commission. See Johnson v. Triple T Foods, 55 Ark. App. 83, 929 S.W.2d 730 (1996). Third, had either Ms. Myers, or Mr. Dickerson on her behalf, filed an original claim for benefits when the injury occurred and she filled out the paperwork in February of 1999, that original claim for benefits would not have tolled the statute of limitations indefinitely. See Petit Jean Air Service v. Wilson, 251 Ark. App. 871, 475 S.W.2d 531 (1972). Fourth, I note that the claimant was represented by legal counsel at least by November of 1999 nearly one and one-half years before the statute of limitations for filing a claim for additional benefits actually began to run in this case on March 9, 2001.

Under these circumstances, I find that the respondents did not engage in any conduct which should estop them from asserting the statute of limitations. I find that the claimant had no legitimate right to believe that a claim for

additional benefits would need not be timely filed after the respondents stopped paying benefits in 2001. I find that the claimant has failed to establish the second and the fourth requirements necessary to prove that the respondents should be estopped from asserting the statute of limitations as a defense to the present claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The parties will stipulate to the employer/employee relationship on 2/11/99, when claimant sustained a compensable injury to her right shoulder.
2. Claimant's average weekly wage was \$207.64, and her compensation rate is therefore \$138.00.
3. The claimant's attorney's letter addressed to Faydeane Gray of the Workers' Compensation Commission requesting a hearing in this case was filed with the Commission on September 3, 2003.
4. The statute of limitations bars the present claim for additional benefits filed with the Commission on September 3, 2003.
5. The respondents are not estopped from asserting the statute of limitations as an affirmative defense to the present claim.

ORDER

For the reasons discussed herein, this claim must be,
and hereby is, respectfully denied and dismissed.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge