

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F404643

BEVELYN J. ROBINSON, EMPLOYEE

CLAIMANT

**BURLINGTON RUG CORPORATION,
EMPLOYER**

RESPONDENT

**AMERISURE MUTUAL INSURANCE CO.,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED MARCH 15, 2005

Submitted on the record before Administrative Law Judge Cynthia Estes Rogers.

Claimant represented by Mr. John L. Kearney, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by Mr. John D. Davis, Attorney at Law, Little Rock, Arkansas.

This case was submitted on briefs to determine the sole issue of whether claimant's claim is time-barred by the applicable statute of limitations, Ark. Code Ann. § 11-9-702.

The parties have stipulated that the employee-employer-carrier relationship existed in March of 2002, and that the claimant's earnings were sufficient to entitle her to weekly indemnity benefits of \$267.00 for temporary total disability and \$200.00 for permanent partial disability benefits, based on an average weekly wage of \$400.89.

Claimant contends that she sustained a compensable injury to her back and neck while at work for respondent-employer on March 21, 2002. On June 18, 2004, claimant faxed a Form AR-C to the Workers' Compensation Commission that was dated June 18, 2002, and listed the date of accident as June 18, 2002. Claimant contends that she had made a claim with the insurance company and thought she had already filed a claim with the Commission.

Respondents contend that the claim, filed more than two years after the date of the alleged injury, is untimely under Ark. Code Ann. § 11-9-702, and should therefore be dismissed.

STATEMENT OF THE CASE

Claimant was employed by respondent-employer in Monticello, in March of 2002. Claimant contends that she sustained a compensable specific-incident injury to her back and neck at work on March 21, 2002, when she was pulling on rugs caught in a machine that was jammed.¹ According to claimant's testimony, she felt a sharp pain in her back and neck that came on all of a sudden when she was pulling on the rugs; she testified that she specifically remembers this event happening on March 21, 2002.

¹It must be noted that, in their brief, respondents refer several times to claimant's testimony from her deposition. Said deposition was not attached as an exhibit nor was it filed with the Commission; however, claimant, in her reply brief, does not dispute any of the statements respondents allege she made in her deposition. Those statements will, therefore, be accepted as uncontroverted testimony.

According to respondents, claimant testified at her deposition that she told her supervisor, Joe Williams, on the date she was allegedly injured that she was having pain in her back, but she did not tell him that she thought she had hurt herself at work. She testified that, following that conversation with Mr. Williams, she never had a conversation with anyone at respondent-employer about a work-related injury. Claimant testified that she made an appointment on her own to see a doctor, following the alleged incident, but that she did not ask respondents to pay for this doctor visit.

It was not until May 28, 2004, that claimant completed an injured employee's report and turned it in to the company. Then, on June 18, 2004, she faxed a Form AR-C to the Workers' Compensation Commission. The form was dated by claimant as "6-18-02," (emphasis added), and the date of accident was listed as "6-18-02," (emphasis added), but it was indisputably faxed to the Commission on June 18th of 2004, not 2002.

The claimant has not received any workers' compensation benefits in connection with this alleged injury.

FINDINGS OF FACT

1. The applicable statute of limitations ran on March 21, 2004;
2. Claimant filed the claim with the Arkansas Workers' Compensation on June 18, 2004, although she hand-dated the Form "June 18, 2002";

3. Claimant has failed to prove that she timely filed a claim under Ark. Code Ann. § 11-9-702.

DISCUSSION

A claim for workers' compensation benefits in Arkansas is barred unless it is filed with the Workers' Compensation Commission within two years of the date of the injury or one year from the date of last payment of compensation, whichever is longer. Ark. Code Ann. § 11-9-702(a)(1)(b)(1). The claimant has the burden of proving that a claim for benefits has been timely filed. *Aluminum Company of America v. Rollon*, 76 Ark. App. 240, 64 S.W.3d 756 (2001). The statute of limitations begins to run on the date of the incident causing the alleged injury. Ark. Code Ann. § 11-9-702(a)(1)(B).

In this case, the claimant contends that she sustained an injury as a result of a specific incident at work on March 21, 2002. She has not received any workers' compensation benefits in connection with the alleged injury. As such, claimant had until March 21, 2004, to file a timely claim for benefits. Claimant's *filing* of the Form AR-C on June 18, 2004, is untimely, regardless of the date she hand-dated the form.

For the above-stated reasons, this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge