

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. C270286

FREDDIE L. TAYLOR, EMPLOYEE

CLAIMANT

FEDERAL COMPRESS & WAREHOUSE
COMPANY, SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED JUNE 15, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on June 13, 2005, at Little Rock, Pulaski County, Arkansas.

Claimant failed to appear.

Respondent represented by Mr. Walter A. Murray, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was scheduled for June 13, 2005, to determine various issues set out further below.

This claim has an unusual procedural history. Prior to the scheduled hearing, a prehearing telephone conference was conducted on April 27, 2005. Prehearing information filings have previously been submitted by both parties. A Prehearing Order was filed on April 27, 2005. A copy of the Prehearing Order was introduced at the hearing as "Commission's Exhibit 1."

As reflected by the Prehearing Order, the parties agreed that the employment relationship existed between the claimant and Federal Compress & Warehouse Company on December 7, 1972; that the employer initially paid medical expenses in the approximate amount of \$75.00 through on or about December 10, 1972, at

which time it controverted the claim in its entirety.

By agreement of the parties, the primary issue to be presented for determination concerned compensability. If answered affirmatively, claimant's entitlement to associated benefits must be addressed. Respondent also raised the Statute of Limitations as an affirmative defense.

At the prehearing conference, the claimant appeared by and through a personal representative, one Jeffrey McQuilkin. The claimant contended, in summary, that he sustained a compensable injury on December 7, 1972; that the injury rendered him permanently totally disabled; and that he was entitled to appropriate total disability benefits.

The respondent maintained that the claimant's current, physical condition was in no way related to an injury that may have occurred while he was working for Federal Compress & Warehouse Company. Respondent further asserted that the claim was barred by limitations of action.

The claimant resides in Fort Myers, Florida. During the prehearing conference, the respondent requested that the claimant be required to travel to Little Rock, Arkansas, for a discovery deposition. Said request was denied. Respondent was permitted to either take a telephone, discovery deposition or travel to Fort Myers, Florida, to depose the claimant. However, the claimant was advised that he would be required to return to the State of Arkansas for a formal hearing in order to pursue his claim. By agreement of both parties, this matter was scheduled for a

formal hearing on June 13, 2005. The claimant was to cooperate in making himself available for a discovery deposition which will be discussed further below.

At the prehearing conference, the claimant identified Lillian Hicks as a potential witness and reserved the right to identify any supplemental witnesses. Respondent reserved the right to call Vicki Cortese as a witness, as well as any witnesses identified by the claimant. The parties were advised that supplemental witnesses, if any, needed to be identified immediately in order to avoid further delays in the adjudication process. In addition, the claimant was advised that if he wished to introduce medical records, in addition to those submitted by the respondents, a copy of the reports should be sent to this Commission and to the respondent's attorney as a condition precedent to their introduction. No supplemental medicals were ever submitted by the claimant.

On May 17, 2005, respondents filed a Motion for Sanctions. In its Motion, respondent stated that on May 13, 2005, legal counsel, together with its personal representative traveled to Fort Myers, Florida, for the purpose of taking claimant's deposition pursuant to the Prehearing Order. Apparently, the claimant ended the deposition prematurely despite being informed by respondent's counsel that respondent would be filing a Motion for Sanctions. Respondent requested that the claim be dismissed with prejudice or that the claimant be ordered to travel to Little Rock, Arkansas, so that his deposition could be completed. By letter dated May 17, 2005, this administrative law judge sent a copy of the Motion, together with

respondent's brief in support of the Motion, advising him that he must respond to all discovery prior to the hearing scheduled for June 13, 2005. As reflected by Certified Mail, Return Receipt Requested, the claimant received a copy of both the Prehearing Order scheduling his claim for formal hearing on June 13, 2005, as well as the May 17, 2005, letter directing that discovery be completed prior to the hearing date.

The next communication received was a letter/fax dated June 8, 2005, sent to this administrative law judge on June 9, 2005, from one Roy H. Kennix, Executive Director, of Leedco, Inc. Mr. Kennix purported to represent an organization that was federally supported and that specialized in assisting low-income persons. Of behalf of the claimant, Mr. Kennix requested a continuance of the June 13, 2005, hearing. He advised that the claimant could be reached at his office by fax, e-mail, or street addresses provided in the correspondence. An immediate e-mail was sent to Mr. Taylor on June 9, 2005, at 3:39 p.m. advising that if the claimant wished to pursue his claim, he would be required to appear at the hearing scheduled for June 13, 2005, in Little Rock, Arkansas, at which time all issues and pleadings would be addressed in an open forum. The claimant was advised that his failure to appear would result in the dismissal of his claim with prejudice. The claimant failed to appear as directed.

At the June 13, 2005, hearing, respondent renewed its Motion that the claim be dismissed with prejudice. Vicki Cortese, the human resource manager and risk

manager for the respondent, testified at the hearing. Ms. Cortese testified that the first notice respondent had concerning the immediate claim was receipt of the claimant's claim for benefits dated July 28, 2003, and filed with the Commission on August 4, 2003.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employment relationship existed between the parties on December 7, 1972.
3. The within claim for benefits was filed on or about August 4, 2003.
4. The claimant failed to appear at the hearing scheduled for June 13, 2005. The claimant was aware of the scheduled hearing. The claimant has failed and/or refused to appear and prosecute his claim as directed.
5. Even in the event claimant had appeared to prosecute his claim, respondent has shown, by a preponderance of the credible evidence, that the claim is barred by limitations of action.
6. Even if the claim was not barred by the Statute of Limitations, nevertheless, the claimant could not prove a causal connection between his alleged December 7, 1972, injury and his current condition and alleged disability.
7. Respondent has controverted this claim in its entirety.

DISCUSSION

The claimant was advised on April 27, 2005, that he would be required to return to the State of Arkansas for a formal hearing in order to pursue his claim. By agreement of the parties, a formal hearing was scheduled on June 13, 2005. Although, admittedly, the claimant belatedly requested a continuance of his hearing through an unknown, third-party, specifically, one Roy H. Kennix, the claimant was promptly advised that he would be required to appear at the scheduled hearing at which time all issues and pleadings would be addressed in an open forum. The claimant was further advised that his failure to appear would result in the dismissal of his claim with prejudice.

After full consideration of the facts, issues, and the law, and with notice of this hearing sent and received by the claimant as reflected by Certified Mail, Return Receipt Requested, it is hereby determined that this claim be, and it is, hereby dismissed for want of prosecution pursuant to Commission Rule 13.

STATUTE OF LIMITATIONS

The time for filing of claims is provided in Ark. Code Ann. §11-9-702. It provides, in part:

(a) TIME FOR FILING.

(1) A claim for compensation for disability on account of an injury, other than an occupational disease and occupational infection, shall be barred unless filed with the Workers' Compensation Commission within two (2) years from the date of the compensable injury. If, during the two (2) year period following the filing of the claim, the claimant receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter. (Emphasis supplied)

The claimant's alleged injury occurred on December 7, 1972. The within claim was filed in August, 2003. Clearly, the claimant failed to file his claim within two (2) years from the date of its alleged occurrence. If an injury becomes known to a claimant, his lack of knowledge as to the law on filing of claims is no defense, since one in full possession of his mental faculties should know that he should file a claim if he has an injury. *Sanderson & Porter vs. Crow*, 214 Ark. 416, 216 S.W.2d 796 (1949).

Even if the claimant could offer a persuasive argument for his failure to appear at the June 13, 2005, scheduled hearing, it appears that the respondent has proven its affirmative defense that the immediate claim should be barred limitations of action. Further, I feel compelled to point out that even if the Statute of Limitations was somehow tolled, which does not appear likely since the claim is more than thirty (30) years old; nevertheless, the claimant could not prove a causal connection between his current physical condition and an alleged injury of December 7, 1972. At the prehearing conference, the claimant was advised that if he had any medical evidence to support his claim and show a causally connection between the alleged incident in 1972 and his current condition, he would be required to submit medical evidence to support the claim. None has ever been filed with this Commission. Clearly, even if the claimant could overcome the prior hurdles, it would require sheer speculation and conjecture to attribute his current condition to an event that occurred in 1972. Conjecture and speculation, however plausible, cannot be

permitted to supply the place of proof. *Dena Construction Company vs. Hearndon*, 264 Ark. 791, 575 S.W.2d 155 (1979); *Arkansas Methodist Hospital vs. Adams*, 43 Ark. App. 1, 85 S.W.2d 125 (1993).

In view of the foregoing, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge