

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210643

JANIE WRINKLE, EMPLOYEE	CLAIMANT
WAL-MART, SELF INSURED EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., TPA	RESPONDENT

OPINION FILED MAY 13, 2005

Hearing held February 15, 2005, before the Honorable S. Dale Douthit, Administrative Law Judge, at Texarkana, Miller County, Arkansas.

Claimant was represented by Mr. Gregory R. Giles, Attorney at Law, Texarkana, Arkansas.

Respondents were represented by Ms. Amy S. Huffman, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Texarkana, Arkansas on February 15, 2005. A prehearing conference was held on November 17, 2004 and a prehearing order was filed on November 18, 2004. The November 18, 2004 prehearing order was marked as Commission Exhibit #1 and made a part of the record without objection. An amended prehearing order was filed on November 24, 2004 and made a part of the record as Commission Exhibit #2 without objection.

At the full hearing the parties agreed to the following stipulations:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) The employee/employer/carrier relationship existed at all relevant times,

including September 8, 2002.

- 3) The claimant's average weekly wage was \$265.55, that would entitle her to a TTD rate of \$177.00 per week and a PPD rate of \$154.00 per week.
- 4) That on September 8, 2002, the claimant completed Workers' Compensation Form N, and gave it to her employer.
- 5) That on September 18, 2002, a case file was opened with the Workers' Compensation Commission concerning claimant's claim and the claim number F210643 was assigned.
- 6) That by letter dated October 7, 2002, Ms. Faydeane Gray, Compliance Office with the Workers' Compensation Commission, notified the claimant her claim was being controverted.
- 7) That between October 7, 2002 and September 8, 2004, the case file remained open and the claim remained pending with no action taken.
- 8) That on September 9, 2004, the claimant requested a hearing before an Administrative Law Judge concerning the issue of compensability.
- 9) That on October 23, 2004, an AR-C form was filed by the claimant. (CX 1 p. 68)
- 10) That the last payment of benefits by respondents was on November 6, 2002, which was for a September 30, 2002 doctor's visit.

The parties agreed at the full hearing the issues to be presented for determination would be limited to the following:

- 1) Whether the claimant sustained compensable injuries on September 8, 2002 and, if overcome, whether the claimant is entitled to TTD, associated medical benefits and attorney fees.
- 2) Whether this claim is barred by the Statute of Limitations.

The claimant contends she sustained compensable neck and carpal tunnel injuries on September 8, 2002, and is entitled to TTD from March 12, 2004 to a date to be determined, associated medical treatments, and attorney fees.

The respondents contend the claimant suffered no compensable injury, either by specific incident or by gradual onset, and that the claimant's employment with Wal-Mart would not be the major cause of the alleged carpal tunnel syndrome. Further, respondents contend the claimant's claim should be barred by the Statute of Limitations.

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 witness and to observe her demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1) The parties stipulations are reasonable and are hereby accepted as fact.
- 2) The preponderance of the evidence provides that the claimant's claim for alleged compensable neck and carpal tunnel injuries of September 8, 2002, is barred by

the Statute of Limitations, and said claim is respectfully denied and dismissed.

DISCUSSION

I. History

The claimant started working for the Respondents on September 6, 2000, first at one of their stores in New Boston, Texas. Sometime in March of 2002 the claimant transferred to a respondents' store in Texarkana, AR. The claimant had varied duties for the respondent; however, from mid May of 2002 until her alleged injuries on September 8, 2002, the claimant solely worked as a cashier for the respondent.

According to the claimant, on September 8, 2002, while working for the respondent, she attempted to drag a case of drinks across her check-out counter to scan them, and while so attempting, she had a "pop" in her neck "and a pain shot" in her back. (T. p. 16, lines 13-16) The claimant testified that about ten minutes after the pop in her back "it just kind of generated from there and it went down my arm, my right arm, my hand started turning purple, and it went down my left arm." (T. p. 16, Lines 19-23)

The record reflects, (CX 1 p. 7), and the claimant testified, she notified her employer the same day of the incident, (Sept. 8, 2002), and filled out a Worker' Compensation Commission Form N. After completing her injury report forms, the claimant went to the emergency room at St. Michael Hospital. At the ER, x-rays were taken, anti-inflammatory medications were given, and she was instructed to follow-up with Dr. McKay the following day.

On September 9, 2002, the claimant followed-up with Dr. McKay, who examined her hands, neck and back, and ordered nerve conduction studies. Dr. McKay diagnosed the claimant

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with possible carpal tunnel syndrome on September 9, 2002. (CX 1., p. 27) The subsequent nerve conduction studies confirmed Dr. McKay's diagnosis. Dr. McKay saw the claimant again on September 16, 2002, and September 30, 2002. On September 30, 2002 Dr. McKay recommended a MRI of claimant's neck. Payment for the MRI was rejected by the respondent and by mid October of 2002, respondents stopped payment of any medical treatment concerning the September 8, 2002 incident but did pay for Dr. McKay's September 30, 2002 treatment.

On September 18, 2002 , the Workers' Compensation Commission sent a notice to the claimant advising her a case file had been opened regarding the September 8, 2002 injury. (CX , p. 36) On October 7, 2002 Ms. Faydeane Gray, Compliance Officer for the Workers' Compensation Commission, sent claimant a letter notifying her the respondents were controverting her injury of September 8, 2002. (CX 1, p. 42)

Two days after the alleged injury, the claimant returned to work for the respondents on light duty. The claimant testified she stayed on light duty for about one and one-half months before she returned to regular duty as a cashier. The claimant testified she worked as a cashier for approximately fourteen (14) months after her light duty stint before being terminated by the respondents in March of 2004.

According to the claimant, she started having more problems with her hands shortly before her termination in March of 2004. The respondents say claimant's termination was due to "no show - no call."

On September 9, 2004, the claimant, through her attorney, filed a request with the Commission for a hearing, (RX1, p. 69), as stipulated by the parties in Stipulation #8 herein.

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Thereafter, the claimant realized she had never filed an AR-C form with the Commission and did so on October 23, 2004. (RX 1, p. 31-32)

ADJUDICATION

II. Statute of Limitations.

The respondents have affirmatively raised the Statute of Limitations defense, and state this claim is barred by the Statute of Limitations.

A.C.A. §11-9-702(a)(1) provides:

“A claim for compensation for disability on account of an injury, other than an occupational disease and occupational infections, shall be barred unless filed with the Workers’ Compensation Commission within two (2) years from the date of the compensable injury.”

The above cited section applies to initial benefits for compensable specific incident injuries and begins on the date of the accident according to Workers’ Compensation Commission Opinion dated May 12, 1998, in claim #E700594, Jeffery Watkins v. Calvin Watkins Concrete Finisher. In said Commission opinion, the Commission outlined the language in A.C.A. §11-9-702(a)(1)(B).

“For purposes of this section, the date of the compensable injury shall be defined as the date an injury is caused by an accident as set forth in A.C.A. §11-9-102(5)”

Further, the Commission noted A.C.A. §11-9-102(18):

“Time of accident” or “date of accident” means the time or date of the occurrence of the accidental incident from which compensable injury, disability or death results”

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The record reflects confusion as to whether this claim is for initial or additional benefits. However, for the Statute of Limitations determination, the claimant gains no more time in which to file a claim if her September 9, 2004 letter was for additional benefits. The parties all agreed the last benefits paid for by the respondents was on September 30, 2002. Under A.C.A. §11-9-702(b)(1), if this were a claim for additional benefits the Statute of Limitations would have run one year from the last medical payment which in this case would have been September 30, 2003; or two years from the date of the accident. In this instance, clearly, the two years from the date of the accident is the longer of the two options. When applying Arkansas Rules of Civil Procedure Rule 6 for time computation, I find the Statute of Limitations began to run the day after the accident, which in this case would be September 9, 2002; and as such, any claim filed after midnight on September 8, 2004, would be barred by the Statute of Limitations.

The claimant argues that the Workers' Compensation Form N filled out by the claimant for her employer on September 8, 2002, tolled the Statute of Limitations due to the fact her employer forwarded it to the Commission and the Commission subsequently assigned it a case number. I find the WCC Form N was not a claim filed by the claimant. It is the employer's responsibility to report the injury, which it did. It is the claimant's responsibility to file a claim. The claimant filed nothing with the Commission until September 9, 2004, as stipulated by the parties. The burden of filing a claim for benefits is on the claimant. Minnesota Mining & Mfg. v. Baker, 337 Ark. 94, 989 S.W. 2d 151 (1999). Even though the claimant didn't file an AR-C Form until October of 2004, I find her request for hearing filed September 9, 2004, with the Commission was her earliest claim "filed with the Commission" pursuant to A.C.A. §11-9-702.

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While a claim for workers' compensation benefits does not have to be formal, or on a particular form, it must be direct and unequivocal and show that a claim for compensation is being made. Little v. Smith, 223 Ark. 601 (1954). The problem is the claimant's September 9, 2004 filing with the Commission was one day late.

The claimant next argued the Statute of Limitations didn't begin to run until February of 2004, because that is when she began to suffer a loss in earnings because of the injury. The claimant cited several cases that stated the Statute of Limitations began to run when two requirements are met: 1) the injury develops or becomes apparent, and 2) the claimant suffers a loss in earnings because of the injury. However, the cases cited by this claimant were all before the passage of Act 796 in 1993. In Minnesota Mining & Mfg. v. Baker, 337 Ark. 94, 989 S.W. 2d 151 (1999), the court addressed when a scheduled injury claim became compensable for Statute of Limitations purposes. The court in Baker found that loss of earnings are presumed in scheduled injury claimants and therefore the Statute of Limitations began to run when the scheduled injury became apparent to the claimant. In this case, the claimant testified that within ten minutes of her back popping, her arms became numb and tingling and turning purple. Carpel tunnel is a scheduled injury and Baker dictates that her earnings were presumed, and the Statute of Limitations began to run when the injuries became apparent to her. I find, based upon the claimant's testimony, that her injuries became apparent to her on September 8, 2002.

The claimant further argued that Dillard v. Benton County Sheriff's Office, CA 04-025, (Sept. 23, 2004), applies in this case, and as such, the respondents should have filed a motion to dismiss. I find the Dillard case has no effect in this situation. I have found the AR-N Form sent

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in by the respondent was not a claim for benefits by the claimant. Therefore, the respondents were not required to file a motion to dismiss and request a hearing prior to September 8, 2004 because I find no claim for benefits was ever submitted to the Commission by the claimant prior to September 9, 2004.

The claimant also seemed to argue the Statute of Limitations did not start to run until her condition stabilized, pursuant to dicta in the Baker case. I find the claimant's deterioration argument to be without merit. First, the claimant's contentions for the carpal tunnel syndrome was always one for a specific incident injury. Never did the claimant allege gradual onset. Second, even though the claimant testified her CTS kept deteriorating, I find her testimony in that regard to be uncredible. After returning to regular duty for fourteen (14) months, the claimant testified her hands became so bad in February of 2004 that she had to take off work. Later the claimant testified that around that same time her daughter was having complications of the birth of her child, and that she planned on taking off to coach her in the delivery room. (T. p.36, lines 1-9)

I find that the claimant's alleged specific incident injuries occurred, and became apparent to her, on September 8, 2002. I find that the Statute of Limitations in this claim began to run the following day on September 9, 2002. I find no claim was filed with the Commission by the claimant until September 9, 2004. It is unusual that the date of the claim and the date the Statute of Limitations ran are so close. However, in applying the Code, case law and Rule 6 of the Ark. Rules of Civil Procedure, I find any claim filed after midnight, September 8, 2004, would be barred by the Statute of Limitations. Also, September 8, 2004 did not fall on a weekend or a

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holiday.

It is necessary to cite WCC decision filed June 17, 2004 in Claim # F201405, Maria Pina v. Wal-Mart. That decision is remarkably similar to the issues discussed herein. In that opinion the Commission also found the Statute of Limitations for carpal tunnel syndrome began to run when claimant began to experience symptoms, and found that in scheduled injury cases loss of earnings was presumed. At the time of writing this opinion, the Commission's decision was affirmed by the Ark. Court of Appeals on May 11, 2005. Pina v. Wal-Mart, CA 04-1045, May 11, 2005.

ORDER

The preponderance of the evidence provides that this claim is barred by the Statute of Limitations, and is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge

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