

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F101366

KENNETH ADAMS,  
EMPLOYEE

CLAIMANT

PACE INDUSTRIES,  
SELF-INSURED EMPLOYER

RESPONDENT

**Opinion filed July 9, 2007**

This matter was submitted on the record on July 3, 2007 before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS.

The claimant was represented by THE HONORABLE Frederick S. "Rick" Spencer, Attorney at Law, Mountain Home, Arkansas.

The respondent was represented by THE HONORABLE James D. Sprott, Attorney at Law, Harrison, Arkansas.

**STATEMENT OF THE CASE**

By agreement of the parties, this matter was submitted on the record on July 3, 2007 for consideration of the issue of statute of limitations. An Order was also entered in this case on July 3, 2007. This Order set forth the stipulations offered by the parties, the issues to be litigated, their respective contentions, and the evidence of record.

**Stipulations**

The following stipulations were accepted by the parties:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer relationship existed at all relevant times, including December 26, 2000.

3. The claimant suffered a compensable neck injury on December 26, 2000.

4. The Form AR-C was timely filed.

### **Issues**

By agreement of the parties, the issue to be resolved was limited to the following:

1. Whether the statute of limitations has run on the claim.

### **Contentions**

The claimant contends that the statute of limitations has not run on the claim.

The respondent contends that the statute of limitations has run on the claim.

### **Record**

The documentary evidence in this matter consists of the following items (which have been blue-backed and made a part of the Commission's record): Transcript of December 3, 2003 hearing; Opinion of February 18, 2004; Respondent's brief; Claimant's brief; Claimant's letter of July 2, 2007 and attached Form AR-C; Claimant's letter of January 12, 2006; Letter and Order of July 3, 2007; and the Commission's filed marked copy of the Form AR-C.

### **Discussion**

The claimant was employed by the respondent. The claimant sustained an admittedly compensable injury to his neck on December 26, 2000 when he slipped on ice. On May, 1, 2003, the claimant filed with the Commission a Form AR-C, which is dated

April 24, 2003. In this Form AR-C, the claimant alleged that he sustained a work-related injury on December 26, 2000, when he slipped on ice and broke his neck. On the Form AR-C, the claimant checked both the "initial benefits" box and the "additional benefits" box. With respect to additional benefits, the claimant checked the boxes for all of these benefits, which included, but not limited to additional temporary total, additional permanent partial, additional medical expenses, and rehabilitation.

A hearing was held on December 3, 2003 to determine to the claimant's entitlement to additional temporary total disability and payment of an unpaid pharmacy bill from Sam Alexander Pharmacy on December 3, 2002. During the hearing, the claimant stated the issue of impairment or wage-loss was reserved until after a change of physician order could be entered and the claimant could be seen by Dr. Ron Williams, a neurosurgeon.

Pursuant to the December 3, 2003 hearing, in an opinion dated February 18, 2004, the administrative law judge found, in pertinent part, "The claimant last saw Dr. Ledbetter at Ozark Orthopedic on November 13, 2002, and that visit was paid on December 13, 2002." This opinion was not appealed.

The sole issue for consideration is whether the claimant's claim for wage-loss disability is barred by the statute of

limitations.

A claim request cannot be considered to be both an initial request for compensation and an additional request for benefits at the same time - an initial request must be paid before an additional request can be made. Eskola v. Little Rock School Dist., 93 Ark. App. 250, \_\_\_ S.W. 3d \_\_\_ (Nov. 30, 2003). Based on the opinion of February 18, 2004 (see finding cited above of payment of medical benefits on 12/3/02), it is undisputed that workers' compensation benefits had been paid prior to the claimant's filing of the claim AR-C form with the Commission on May 1, 2003. Therefore, under these circumstances, I find that the Form AR-C filed May 1, 2003, was a claim for "additional benefits."

Next, the allowable time for filing a claim for additional benefits must be considered. Arkansas Code Annotated section 11-9-702(b) sets forth how a claimant can file a claim for additional compensation. Section 11-9-702(b) states in relevant part:

(b) TIME FOR FILING ADDITIONAL COMPENSATION.

(1) In cases in which 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.

Based on the evidence before me, the last medical bill the

respondent paid was for treatment received on November 13, 2002. The claimant filed his claim for additional benefits on May 1, 2003. Based on these facts, I find that the claimant's claim for additional benefits was timely filed.

When a claimant files a timely request for additional benefits, the statute of limitations is tolled. Vanwagner v. Wal-Mart Stores, 95 Ark. App. 173, \_\_\_, S.W. 3d \_\_\_ (May 3, 2006,); Eskola v. Little Rock Sch. Dist., 93 Ark. App. 250, \_\_\_ S.W.3d \_\_\_ (Nov. 30, 2005); Dillard v. Benton County Sheriff's Office, 87 Ark. App. 397, 192 S.W. 3d 287 (2004); Spencer v. Stone Container Corp., 72 Ark. App. 450, 38 S.W.3d 309 (2001); Bledsoe v. Georgia-Pacific Corp., 12 Ark. App. 293, 675 S.W.2d 849 (1984).

In the present matter, I find that the claimant filed a timely request for additional benefits via of the Form AR-C, which was filed with the Commission on May 1, 2003, thereby tolling the statute of limitations. Although the claim for additional temporary total disability and additional unpaid medicals was litigated. The claim for permanent partial disability was neither litigated nor dismissed, thus the toll was never lifted, and the claim for permanent partial disability benefits remains outstanding. As a result, under these circumstances, I am constrained to find that the claim for wage-loss is not time barred.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed at all relevant times, including December 26, 2000.
3. The claimant suffered a compensable neck injury on December 26, 2000.
4. The Form AR-C was timely filed.
5. The claimant's claim for wage-loss disability is not barred by the statute of limitations.

**Order**

This claim for wage-loss disability is not barred by the statute of limitations.

**IT IS SO ORDERED.**

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CHANDRA HICKS  
Administrative Law Judge