

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. E406824**

<b>SIDNEY BOATWRIGHT, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>CITY OF WEST MEMPHIS, SELF-INSURED EMPLOYER</b>	<b>RESPONDENT</b>
<b>MUNICIPAL LEAGUE W.C. TRUST, TPA</b>	<b>RESPONDENT</b>

**OPINION FILED FEBRUARY 22, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on February 22, 2007, at Marion, Crittenden County, Arkansas.

Claimant appeared pro se.

Respondent represented by the HONORABLE J. CHRIS BRADLEY, Attorney at Law, North Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-style cause to determine the claimant's entitlement to additional workers' compensation benefits.

On December 12, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to same. The Pre-Hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Mr. Sidney Boatwright, the claimant, coupled with medical reports, and other documents comprise the record in this claim.

## DISCUSSION

Sidney Boatwright, the claimant, with a date of birth of February 20, 1961, has a tenth grade education. Claimant commenced his employment with respondent as a sanitation worker on January 23, 1987. The claimant's employment was terminated by respondent in 1996.

On or about February 15, 1994, claimant sustained compensable injuries, in the form of frost bite, to both feet. The injury was reported to appropriated supervisory of respondent and the claimant received medical treatment under the care of Dr. Robert H. Segal.

The testimony of the claimant reflects that medical treatment was provided relative to his right foot, in the form of surgery. Further, the claimant maintains that his right foot was placed in a cast for a period of approximately eight (8) months, during which time he was unable to work. Claimant asserts that during the afore period, he received his regular check from respondent-employer for four months and that he received workers' compensation benefits for the remaining period.

Claimant maintains that once the cast was removed from his right foot he was directed to return to work under threat of loss of job although he was continuing to experience symptoms of pain and swelling in both feet relative to the compensable injury. Claimant asserts that he called and talked with Ms. Julie Moore, a supervisor with respondent-employer, and request medical treatment relative his left foot, however did not receive a response. Likewise, claimant testified that he requested access to medical treatment for his left foot complaint from his immediate supervisor, Mr. Robert Bateman, however the same was never provided.

On or about May 12, 1995, the claimant sustained another compensable injury in the employment, when he slipped and fell injuring his left hip. Claimant maintains that when he was

fired by respondent-employer he told that the basis for same was his inability to pull trash and keep up with his co-worker. Following the termination of his employment claim filed for unemployment compensation benefits, however was not awarded any. Also, the claimant acknowledged he did file a lawsuit in Federal Court against respondent-employer as a result of the termination. Claimant did not prevail in the afore action.

The claimant conceded on cross-examination that neither Ms. Moore nor Mr. Bateman assured him that medical treatment would be provided relative to his left foot pursuant to his request. The claimant acknowledged receiving the closing report, Form AR-4 from Ms. Carmaen Morgan, the claims representative, relative to his February 15, 1994, injury. (CX. #2).

The testimony of the claimant reflects that after his employment was terminated by respondent-employer he secured employment through a temporary employment agency. Claimant explained that he worked through the temporary employment agency for approximately four (4) years, at which time he secured permanent employment with Barton Lumber Company. Claimant asserts that since respondent would not pay for medical treatment relative to his left foot, he had to work in order to pay for it himself. The testimony of the claimant reflects that he was employed by Barton Lumber Company for approximately one (1) year at the time he sought medical treatment for his left foot in 2001.

The testimony of the claimant reflects that he did not receive any medical treatment relative to his left foot frost bite injury following his return to work for respondent in 1995, until November 16, 2001, when he was seen at Crittenden Memorial Hospital and underwent a surgical procedure relative to same. The testimony of the claimant reflects that the cost of the afore medical treatment was paid for by Barton Lumber Company.

Claimant testified that he decided to pursue the present claimant for additional workers' compensation medical benefits based on information he received when he attempted to get Social Security disability benefits. Thereafter, the claimant instituted the present claim.

The medical in the record reflects that the claimant underwent a surgical procedural under the care of Dr. Thomas Ashbery, D.P.M., at Crittenden Memorial Hospital on November 16, 2001. The report relative to the afore reflects a preoperative diagnosis of painful distal tip second digit left foot secondary to a history of frost bite. The surgical procedure performed by Dr. Ashbery was an amputation of the distal phalanx of the second digit of the left foot. (CX. #1).

The record of the payment history relative to the claimant's February 15, 1994, compensable injury reflects that a total of \$711.25, was expended by respondent to Dr. Robert H. Segal and the Pathology Group, PC. Further, the payment history reflects that respondent paid \$44.50, to Systemedic Corporation. The afore sum is designated as "rehabilitation" on the September 22, 1994, Closing Report, Form AR-4. (CX. #2). Further, the Closing Report does not reflect that any indemnity benefits were paid to the claimant. The dates of service reflect in the Payment History for Dr. Segal and the Pathology Group, PC are from June 2, 1994 through June 16, 1994, while that for Systemedic Corporation is August 1994.

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, review of the medical report and other documentary evidence, application of the appropriate statutory provision and case law, I make the following:

#### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On February 15, 1994, the relationship of employee-employer existed between the

parties.

3. On February 15, 1994, the claimant sustained compensable injuries, in the form of frost bite to both feet, arising out of and in the course of his employment.

4. Respondent last paid any workers' compensation benefits in this claim relative to the claimant's February 15, 1994, compensable injury on August 17, 1994.

5. The claimant filed his claim for additional workers' compensation benefits growing out of the February 15, 1994, compensable injuries on or about September 25, 2006. The claim for additional workers' compensation benefits having been filed in excess of one (1) year from the last payment of compensation benefits and two (2) years from the date of injury, is barred pursuant to Ark. Code Ann. §11-9-702 (b).

### **CONCLUSIONS**

The compensability of the claimant's February 15, 1994, frost bite injuries to both feet is not disputed. Claimant asserts that as a result of the February 15, 1994, compensable injuries he continues to require medical treatment relative to his left foot for which respondent is liable. Respondent contends that the claimant's claim for additional workers' compensation benefits as a result of the February 15, 1994, compensable injuries is barred by the applicable statute of limitation.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to additional workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. As previously noted, compensability of the February 15, 1994, frost bite injuries to both of the claimant's feet is

not disputed.

While the claimant asserts that he was off work following the February 15, 1994, injuries for a period of approximately eight (8) months during which time his regular wages continued for approximately four (4) months and he received four (4) months of workers' compensation indemnity benefits, there is no corroborative documentary evidence in the record to support the assertion. Further, both the Payment history of the claim and the Closing Report are devoid of entries of indemnity payments to the claimant. (RX. #1; CX. #2).

The evidence in the record does reflect that the claimant sustained another compensable injury in the employment of respondent on May 12, 1995. Respondent terminated the claimant's employment in 1996. While the claimant may have requested medical treatment relative to the frost bite injury to his left foot from supervisory personnel, claimant acknowledged that he was not promised or assured that the treatment would be furnished. Indeed the testimony of the claimant reflects that the supervisory personnel to which he made the request were non-responsive. Accordingly, there is a lack of evidence of reliance on the part of the claimant to responses or non-responses from supervisory personnel of respondent-employer.

Further, the evidence reflects that the claimant last received medical treatment or workers' compensation benefits relative to the February 15, 1994, compensable injuries to his feet on August 17, 1994. After the claimant's employment with respondent was terminated in 1996, he instituted a Federal lawsuit. The claimant also filed for, however did not receive, unemployment compensation benefits following the termination of his employment. Although the claimant pursued remedies in both the federal court system and before a state agency he did not seek additional workers' compensation benefits relative to the February 15, 1994,

compensable frost bite injuries to his feet until on or about September 25, 2006, with the filing of the Form AR-C.

Ark. Code Ann. §11-9-702 (b), provides in pertinent part:

(b) TIME FOR FILING FOR ADDITIONAL COMPENSATION. In cases where compensation for disability has been paid on account of an injury, a claim for additional compensation shall be barred unless filed with the commission within one (1) year from the last payment of compensation, or two (2) years from the date of the injury, whichever is greater. The time limitations of this subsection shall not apply to claims for replacement of medicine, crutches, artificial limbs, and other apparatus permanently or indefinitely required as the result of a compensable injury, where the employer or carrier previously furnished such medical supplies.

The furnishing of medical services constitute payment of compensation within the meaning of the limitations statute. The one-year limitations period begins to run from the last payment of compensation, which means the date of the last furnishing of medical services. *Plante v. Tyson Foods, Inc.*, 319 Ark. 126, 890 S.W.2d 253 (1994).

In the instant, the evidence preponderates that respondent last furnished medical services to the claimant relative to the February 15, 1998, compensable frost bite injuries to his feet on August 17, 1994. While the claimant acknowledged receiving the September 22, 1994, Closing Report, Form AR-4, he did not take any affirmative action to pursue his claim for additional benefits until September 25, 2006. The claimant's claim for additional workers' compensation benefits relative to the compensable February 15, 1994, compensable injuries is barred pursuant to the limitations period set forth in Ark Code. Ann. §11-9-702 (b). This claim is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**Andrew L. Blood, ADMINISTRATIVE LAW JUDGE**