

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F203528

WILLIAM BOGY, EMPLOYEE

CLAIMANT

**TRI-STATE DELTA CHEMICALS, INC.,
SELF-INSURED EMPLOYER**

RESPONDENT

**SEDGWICK CLAIMS MANAGEMENT SERVICES (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JANUARY 11, 2007

Hearing before Administrative Law Judge Barbara Webb on October 12, 2006, in Pine Bluff, Jefferson County, Arkansas.

Claimant appeared *PRO SE*.

Respondents represented by Mr. Curtis L. Nebben, Attorney at Law, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on October 12, 2006, before Administrative Law Judge Barbara Webb. A Prehearing telephone conference was held on this claim on August 22, 2006. The Prehearing Order was entered in this case on August 22, 2006. The Prehearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at this hearing. A copy of the Prehearing Order was made Commission's Exhibit No. 1 to the hearing record. The following stipulations as submitted by the parties in the Prehearing Order and as amended on the record are hereby accepted:

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee relationship existed on or about February 17, 2000.
3. The claimant was earning sufficient wages to entitle him to a compensation rate of \$324.00 for TTD and \$243.00 for PPD.
4. A ten percent permanent anatomical impairment rating to the lower extremity in the amount of \$5,446.40 was accepted and paid by respondents.
5. The last payment for medical expenses in this claim was made on October 8, 2003, for a service date of July 23, 2003, and received on October 14, 2003.
6. The last PPD payment made was March 28, 2002.
7. The respondents paid mileage payments, with the last one paid in September 2002.
8. The claimant submitted a Form AR-C on March 1, 2006.

ISSUES

By agreement of the parties, the issues to be presented at the hearing are as follows:

1. Claimant's entitlement to additional benefits.

The record consists of a one volume transcript of the October 12, 2006, hearing, consisting of the testimony of Lou Ann Bogey, William Bogey and all documentary evidence consisting of Commission's Exhibit No. 1 (Prehearing Order); Claimant's Exhibit No. 1 (medical records); Claimant's Exhibit No. 2 (Davis Patient Ledger); Claimant's Exhibit No. 3 (South Arkansas Orthopedic Ledger); Respondents' Exhibit No. 1 (Sedgwick Ledger); Respondents' Exhibit No. 2 (Letter to Dorothy Jackson); Respondents' Exhibit No. 3 (Form AR-C); Respondents' Exhibit No. 4 (12/19/01 Dr. Clark Letter).

CONTENTIONS

The claimant contends he is entitled to additional medical benefits.

The respondents contend the claimant is not entitled to any additional medical expenses based on the medical reports and records in their possession. The respondents contend this claim is barred by the statute of limitations since the last payment on this claim was for medical expenses with a service date of July 23, 2003.

FACTUAL BACKGROUND

Claimant is 53 years of age (birth date June 22, 1953). He completed high school and attended two years of college at Arkansas Tech University. He worked at a cotton gin and as a farm manager for twenty-five years. In April of 1997, he began working for Tri-State as a truck driver. He testified that on February 17, 2000, he was loading fertilizer. As he got off the machine, his foot went out from

under him causing him to twist his right knee. It popped and he could not move. He reported the injury to the secretary. The next day it was swollen and hurt. He continued to work with limitations. However, due to the pain, he sought medical treatment from Dr. Paul Davis. The knee was x-rayed and he was given an injection of cortisone. He returned in two to three weeks and was referred for treatment to Dr. Clark. Dr. Clark examined his knee and determined that nothing was broken. He gave him injections and wrapped the knee. Bogy returned in three weeks for a follow-up examination. At that time, the knee had not improved and Dr. Clark drained fluid from the knee. He was subsequently sent for an MRI but it could not be performed due to a piece of metal in his scalp. Bogy continued to treat conservatively with injections but a year later underwent arthroscopic procedures to try to diagnose and fix the problem with his knee. He continued to work a Tri-State during this time. In 2001, he had a wreck on a spray rig and reinjured the knee. He left his employment with Tri-State in November of 2003. He subsequently worked for Apache Spraying as a commercial sprayer applicator. He explained that he was able to perform his job duties but had good days and bad days.

On cross-examination, Bogy testified that he continued to go duck hunting and deer hunting. He testified that he was treating with Dr. Clark for problems with his right wrist and left elbow since 1998. He saw Dr. Clark in November of 2003 with a right wrist problem. He went back on November 17, 2004 and October of 2005. He filed his claim for additional benefits on February 25, 2006. He explained that he became aware that the Respondents had stopped paying his medical bills

in the latter part of 2004. He testified that he went to a local attorney who took all of his records and after five or six months, sent him a letter advising that he would no longer represent him. He contacted another attorney who told him that "there's no money in it for me". He testified that he subsequently talked to another attorney several months later who told him that "the best he could tell, it was a couple of months past the Statute of Limitations". He contacted the Commission in February of 2006 and filed his claim.

Medical records reflect that the claimant continued treatment with Dr. Clark from February of 2000 until April 6, 2000 for a medial, meniscus tear of the right knee for which he underwent arthroscopic removal and abrasion. On April 6, 2000, Dr. Clark released him to return to full and unlimited activity with a permanent partial impairment rating of 8% of the involved knee. From July of 2000 until November of 2003, he sought medical treatment for posttraumatic degenerative arthritis of the right knee. After November of 2003, he next sought medical attention for his right knee on November 17, 2004 and October 25, 2005. On November 16, 2005, Dr. Clark noted that the claimant was an established patient with severe arthritis of the right knee. On February 25, 2006, claimant wrote a letter and filed a claim with the Commission seeking additional medical expenses and additional permanent partial disability benefits for his right knee. He noted that the insurance company has stopped paying medicine bills on November 11, 2003, and medical bills on July 19, 2004. On September 21, 2006, Dr. Clark prepared a report summarizing the treatment provided to the claimant consisting of intermittent injections and

aspirations for chronic problems with his right knee which had appeared to have worsened over time.

DISCUSSION

Claimant contends that he has continued to need medical care due to his work-related injury. Respondents argue that no payments of compensation have been made after 2003, and therefore the statute of limitations has run on this claim.

Based on the preponderance of the evidence offered in this case, I find that the claim for additional benefits is barred by the applicable statute of limitations.

STATUTE OF LIMITATIONS

Ark. Code Ann. § 11-9-702 (b) sets out the allowable time for filing a claim for additional benefits. In cases where any compensation has been paid, the claim for additional compensation, including disability or medical, will be barred unless filed within one year from the date of the last payment of compensation or two years from the date of the injury, whichever is greater. Ark. Code Ann. § 11-9-702 (b)(1). When the claimant submits a timely request for additional benefits that is never acted upon, the statute of limitations is tolled. *Barnes v. Fort Smith Public Schools*, ___ Ark. App. ___, ___ S.W.3d ___ (May 17, 2006); *Eskola v. Little Rock Sch. Dist.*, ___ Ark. App. ___, ___ S.W.3d ___ (Nov. 30, 2005); *Dillard v. Benton Co. Sheriff's Office*, 87 Ark. App. 379, ___ S.W.3d ___ (Sept. 22, 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 this case, the claim was accepted as compensable and medical benefits and permanent partial disability benefits were paid. The evidence demonstrates that no benefits were paid after October 14, 2003. Two years from the date of injury would have been February of 2002. One year from the last payment of benefits would have been November 14, 2004. Although Bogy continued medical treatment sporadically after October of 2003, he had left his employment with the Tri-State in November of 2003. Moreover, Bogy testified that he became aware that the insurance company was no longer paying his medical expenses in 2004. Based on the preponderance of the evidence that Bogy did not make a claim for additional compensation until February of 2006, I find that the claim is barred by the statute of limitations.

Therefore, for the reasons set forth herein, I find the preponderance of the evidence shows that the claim is barred by the statute of limitations.

Because I have ruled that the preponderance of the evidence shows the claim is barred by the statute of limitations, it is not necessary for me to address this issue or the remaining claim on the merits of whether the medical treatment was reasonable or necessary and whether claimant is entitled to a re-examination and further treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

2. The employee/employer/carrier relationship existed between the parties in February of 2000, and at all other relevant times.
3. That claimant sustained a compensable right knee injury on February 17, 2000. Claimant was paid medical expenses, including mileage, through October of 2003, and permanent partial disability benefits of \$5,446.40 on March 28, 2002.
4. Two years from the date of injury would have been in February of 2002.
5. No benefits were paid by respondents after October of 2003.
6. One year from the last payment of benefits would have been October of 2004.
7. Based on the preponderance of the evidence, I find that the claim for additional benefits is barred by the applicable statute of limitations.

ORDER

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge