

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F506899

DARRON JACKSON

CLAIMANT

TRANSWOOD, INC.

RESPONDENT EMPLOYER

GREAT WEST CASUALTY CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED JANUARY 8, 2007

Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE JAMES W. STANLEY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE J. LESLIE EVITTS, III, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

The above case is written on the record with the agreement of all parties regarding the sole issue of statute of limitations.

STIPULATIONS OF FACT

1. The relationship of employer/employee existed as between the claimant and the respondents on July 17, 2003. On that date, the claimant reported an injury to his right shoulder, armpit area and right hip, occurring in Benton, Arkansas.

2. The claimant received medical treatment from Dr. Khoa C. Nguyen on July 18, 2003. On July 22, 2003, Dr. Nguyen saw the claimant for a follow up appointment, and Dr. Nguyen released the claimant to return to work on July 24, 2003, with no physical restrictions and no permanent disability rating.

3. The claimant returned to full duty and continued working for the respondents until February of 2004 when the terminal at which he was employed in Arkansas was shut

down.

4. The respondents accepted the claim as compensable and paid the medical expenses arising out of the claimant's two office visits with Dr. Nguyen.

5. The claimant was not entitled to temporary total disability benefits, as he was only off work six days as a result of the accident. The respondents controverted any additional medical treatment subsequent to the claimant being released by Dr. Nguyen.

6. On July 15, 2005, the claimant filed a claim for benefits with the Nebraska Workers' Compensation Court, Docket number 2005, Page 1278, for additional benefits arising out of the July 17, 2003, accident.

7. On July 18, 2005, the claimant filed an AR-C Claim Form with the Arkansas Workers' Compensation Commission, seeking additional benefits in the form of temporary total disability benefits and additional medical treatment from injuries allegedly arising out of the July 17, 2003, accident.

8. On June 8, 2006, the claimant's Nebraska workers' compensation claim was dismissed with prejudice by the Nebraska Workers' Compensation Court.

9. The respondents plead as an affirmative defense that the statute of limitations bars the respondents' liability as to any benefits which the claimant contends are due and owing on this Arkansas Workers' Compensation claim.

10. The sole issue before the Commission at this time is whether the claimant's filing of the Nebraska workers' compensation claim tolls the statute of limitations as to the filing of the Arkansas Workers' Compensation claim.

DISCUSSION

The applicable law to be considered is Ark. Code Ann. §11-9-702(b), TIME FOR FILING ADDITIONAL COMPENSATION:

(1) In cases where 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.

In the instant case, it has been stipulated the date of the injury is July 17, 2003, with the last payment of compensation being payment for medical treatment provided by Dr. Nguyen on July 22, 2003. The claimant filed his claim for additional medication benefits (Form AR-C) on July 18, 2005, with the Arkansas Workers' Compensation Commission. In order for the claimant to have filed a timely claim for benefits, the claim would have had to be filed on or before July 17, 2005, in Arkansas.

The claimant in the present claim filed a claim for benefits with the Nebraska Workers' Compensation on July 15, 2005, for additional benefits arising out of his July 17, 2003, injury. On June 8, 2006, the Nebraska Workers' Compensation Court dismissed the claimant's case with prejudice.

The claimant contends that the filing of the Nebraska workers' compensation claim tolled the statute of limitations for the Arkansas workers' compensation claim. Respondents contend the claim is barred by the Arkansas Workers' Compensation statute of limitations. Respondents rely on a pertinent Arkansas Court of Appeals decision in *Haney v. Young Sales Corp.*, 22 Ark. App. 212, 737 S.W.2d 669 (1987) where the claimant argued the statute of limitations was tolled by the filing of a claim in Missouri under Ark. Stat. Ann. 81-1318(e) (Repl. 1976). As a prerequisite to the tolling of the statute under Ark. Stat. Ann. 81-1318, paragraph (e) requires (1) an action at law for damages, (2) denial of recovery, and (3) that recovery be denied on the ground that the employer and employee were subject to the Workers' Compensation Act. *Bryan v.*

Ford, Bacon and Davis, 246 Ark. 327, 438 S.W.2d 472 (1969); *Guthrie v. Tyson Foods, Inc.*, 20 Ark. App. 69, 724 S.W.2d 197 (1987).

As respondents note, the Arkansas Court of Appeals in *Haney* stated:

81-1318(e) was not intended to apply to claims for statutory benefits for industrial injuries filed before the Workers' Compensation agencies of sister states but was designed to allow an extension of the period of limitations for the filing of claims by those who mistakenly pursued tort claims against their employers, when in fact the exclusive remedies afforded for their injuries were under the Workers' Compensation Act.

In the present case, the claimant did not mistakenly file a tort claim against respondents in Nebraska, but filed a claim for additional benefits for a work injury in Nebraska. Even if Ark. Stat. Ann. §81-1318(e) (Repl. 1976) was still the applicable law, this section would still not apply to the present case.

The applicable law to the present case is Ark. Code Ann. §11-9-702 (which was formerly Ark. Stat. Ann. §81-1318, as amended by Act 796 of 1993) and this statute deleted from the former subpart (e) Effect of suit. Currently, the Arkansas statutes contain no provision that the filing of a workers' compensation claim in another state can toll the statute of limitations. Again, as respondents have noted, the Arkansas Supreme Court has held the burden of filing a workers' compensation claim within the appropriate statute of limitations is on the claimant. *Minnesota Mining and Mfg. v. Baker*, 337 Ark. 94, 999 S.W.2d 151 (1999).

After consideration of the applicable statute and pertinent case law and the facts in the present case, I find the claimant did not make a timely claim for additional benefits in Arkansas, as required by Ark. Code Ann. §11-9-702, and, therefore, I find his claim for additional benefits is barred by the statute of limitations. The initial injury

was July 17, 2003, the last payment of compensation was July 22, 2003, and the claim for additional benefits was received on July 18, 2003.

ORDER

The preponderance of the evidence provides that the claimant's additional benefits claim is barred by the statute of limitations pursuant to Ark. Code Ann. §11-9-702. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**