

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F409182**

<b>REBECCA RUDISILL, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>WAL-MART., EMPLOYER</b>	<b>RESPONDENT</b>
<b>CLAIMS MANAGEMENT, INC., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED JULY 24, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on April 25, 2007, at Little Rock, Arkansas.

Claimant appeared Pro Se.

Respondents represented by the HONORABLE SUSAN FOWLER, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of \$1,228.02 in medical expenses.

At issue is whether or not this claim is barred by the statute of limitations pursuant to Ark. Code Ann. §11-9-702 and whether treatment at the Baptist emergency room (ER) was unauthorized.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on August 15, 2004 at which time the claimant sustained a compensable injury. The claim was accepted as a "medical only" case opened by AR-1 filed September 3, 2004 and AR-2 filed September 21, 2004. Some expenses were paid before the claim was controverted as of October of November 2004. An AR-4 was filed September 22, 2004. A mandatory mediation conference was held with the Legal Advisors

on February 22, 2007.

The claimant contends she stepped into an uncovered drain in the floor on August 15, 2004 and twisted her leg, back and elbow. She reported the incident but no accident report form was completed. On August 19, 2004, the claimant bent over to clean a cart and could not straighten her back. She sought medical treatment at the emergency room (ER) and notified her employer. She was excused from work for one week and returned on August 26, 2004 to full duty. The claimant seeks payment of her medical expenses.

The respondents contend this claim is barred by the Statute of Limitations. Alternatively, the medical treatment at the ER was unauthorized.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript along with the deposition of the claimant (taken April 19, 2007) incorporated by reference.

The claimant, who appeared to be sincere in her testimony, was the only witness to testify at the hearing.

The claimant, age 65 (D.O.B. May 30, 1942) has work experience as a certified nurse's assistant (CNA). She had worked for the respondent- employer about one year, demonstrating products in the meat department.

On August 15, 2004 the claimant slipped on an uncovered drain in the threshold of a doorway, injuring her right side (elbow, back, hip), (Tr. p. 10-11). At the time of the incident, she was working with another "Demo Lady", Linda Johnson.

The incident was reported to managers Wayne Hackett and Gary Hill, but no accident report was completed, (Tr. p. 11-12). The claimant went home to clean up and was scheduled to be off

work the next two days. On Thursday, August 19, 2004 she returned to work and was in the process of cleaning her demo cart when her back hurt so badly that she could barely stand up straight, (Tr. p. 12-13/16).

Once again, she reported the incident to supervisors, Mr. Lee and Kevin Sanders, but no accident report was completed. Mr. Sanders told her to take an extra break if her back was hurting. At the end of the day, she told yet another supervisor, Darin Rudess, that she hurt her back and needed to see a physician. No accident report was completed. He told her to see a physician and let them know how she was doing. He did not send her to the company physician, (Tr. p. 13-15).

On Friday, August 20, 2004, the claimant went to the emergency room and was treated by Dr. Young who performed x-rays and prescribed medication. The ER at Baptist Hospital charged her \$938.50. She returned to work and spoke with the personnel manager, Ms. Cassie. She was told to have her prescription filled at the respondent-employer's pharmacy and this prescription was paid by the respondent-employer. Ms. Cassie also told her she would fax the ER bill to Mr. McKinney in Bentonville, (Claims Management, Inc. is located there), however, the claimant testified Ms. Cassie did not ask her to fill out or sign an accident report form, (Tr. p. 15-18). Nevertheless, documentary evidence shows the claimant completed a Wal-Mart Form "Associate Statement - Workers' Compensation" on August 20, 2004, (Depo. p. 35-37).

The physician at the Baptist ER excused the claimant from work until August 26, 2004 and the claimant took this document to Ms. Cassie. On the Wednesday before her return to work on August 26, 2004, Ms. Cassie called the claimant and asked her to go to Concentra Health Care for a drug test (Tr. p. 19-20). The claimant also completed an AR-N on August 26, 2004 listing the injury as the fall in the drain on August 15, 2004.

The claimant returned to work but quit due to harassment. In late October or early November, 2004, the claimant received notice that her claim had been denied.

The claimant testified she called the Legal Advisor Division of the Workers' Compensation Commission and was told to contact Legal Aid. Legal Aid told her they did not handle workers' compensation cases.

Baptist Hospital sent notice on February 1, 2006 of their intent to collect the ER debt of \$938.50. Judgment against the claimant was entered on October 16, 2006 and with court costs and attorney's fees, the total came to \$1,228.02. The Judge recommended the claimant contact attorney Jerry James (now retired) with regard to her workers' compensation claim. Mr. James explained how to pursue her claim and the claimant filed letters (October 12, 2006 and December 18, 2006) with the Commission seeking a hearing.

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#### **DOCUMENTARY EXHIBITS**

The claimant testified she spoke with the adjustor, J. R. McKinney, on only one occasion. Although she called him several times and left messages, he would not return her calls. The Adjustor's notes show the claim was accepted as compensable but the ER bill was denied because the claimant "took herself to the ER before filing workers' compensation". The ER bill was incurred on the morning of August 20, 2004 and the claimant filled out forms for her employer on August 20, 2004 and August 26, 2004 consistently listing the date of injury as August 15, 2004. It is unknown why the carrier paid for a drug test several days after the injury. The results of the test would have no bearing on whether or not the claimant was intoxicated days earlier.

## FINDINGS AND CONCLUSIONS

The evidence of record shows the claimant sustained an injury at work on August 15, 2004, substantiated by bruising. She reported the incident to four supervisors who ignored her. On her own, the claimant went to the ER and incurred a bill of \$938.50. She took her prescription and off work slip to the personnel manager. The personnel manager authorized the claimant to fill her prescription and sent documentation to the adjuster.

The respondent then paid for the claimant to take a useless drug test days after the injury. They also paid the company doctor to evaluate the claimant (using the testing from the ER). There is no documentation that the adjuster ever notified the claimant about their position on the claim. However, the claimant testified she knew the case was controverted as of late October or early November 2004. The claimant returned to work, but felt harassed. After she quit, she received notice that her claim was denied.

The respondents' medical expenses (drug testing, company physician, prescription) and litigation expenses, (discovery, mediation, deposition, hearing, transcript costs) incurred to defeat this claim, clearly exceed the value of this claim.

In pertinent part, Ark. Code Ann. §11-9-702 provides:

A claim for compensation for disability on account of an injury... shall be barred unless filed with the Workers' Compensation Commission within two (2) years from the date of the compensable injury.

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 last payment of compensation or two (2) years from

the date of the injury, whichever is greater.

In some situations, the claimant's failure to file a claim may be excused under the doctrine of estoppel. The elements of estoppel were explained in Snow v. Alcoa, 15 Ark. App. 205, 691 S.W.2d 194 (1985):

1. the party to be estopped must know the facts;
2. he or she must intend that his or her conduct shall be acted upon or must act so that the party asserting the estoppel has a right to believe the other party so intended;
3. the party asserting the estoppel must be ignorant of the true facts; and
4. the party asserting the estoppel must rely on the other's conduct to his or her detriment.

In the case at bar, the claimant testified she was aware that her claim had been controverted as of October or November 2004, so estoppel does not apply. The burden was on the claimant to file a claim with the Commission for payment of the ER bill within the statute of limitations.

Given her employer's decision to ignore her report of injury, the claimant's ER visit was entirely justified as emergency medical treatment. Unfortunately, the claimant's hearing requests in 2006 are more than two years from the date of injury and more than one year from the last payment of benefits. Therefore, I find this claim is barred by the statute of limitations.

1. The relationship of employer-employee-carrier existed among the parties on August 15, 2004 at which time the claimant sustained a compensable injury to her right side (back, hip, elbow) which was aggravated on August 19, 2004.
2. The claimant reported these injuries to four different supervisors who did not complete an accident report until after the claimant went to the ER for treatment.
3. The ER treatment was emergency care for the

compensable injury which did not require prior authorization from the employer.

4. The claimant's request for a hearing filed October 12, 2006 is barred by the statute of limitations as the hearing request is more than two years from the date of injury and more than one year from the last date of payment.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge