

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NOS. F407818/F407819

SAUL TORRES, Employee	CLAIMANT
ROCKLINE INDUSTRIES, Employer	RESPONDENT
FEDERAL INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED APRIL 20, 2007

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by JARROD PARRISH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 28, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 3, 2007, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed among the parties at all relevant times.
3. The claimant sustained compensable injuries on March 10, 2003 and December 17, 2003 to his neck and arms.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to additional medical treatment for injuries of March 13, 2003 and December 17, 2003.

## 2. Statute of limitations.

The claimant contends that as a result of his compensable injuries to his neck and arms on March 10, 2003 and December 17, 2003, that he is entitled to additional medical treatment.

The respondents contend that the statute of limitations has run with regard to both claim numbers F407818 and F407819. The last date benefits were provided on either claim was March 28, 2005. Both claims were dismissed by order dated September 30, 2006. Therefore, the statute of limitations has run on both claims. Alternatively, if the statute is deemed not to have run on either claim, respondents maintain that additional medical care is not reasonable and necessary in light of the diagnostic studies performed on claimant which returned negative results.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on January 3, 2007, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant's claim for additional compensation benefits is barred by the statute of limitations.

3. Even if claimant's claim were not barred by the statute of limitations, claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injuries.

### FACTUAL BACKGROUND

The claimant is a 47-year-old man who began working on respondent's baby wipe production line in 2000. Claimant's job duties included the placing of finished cases of product weighing an average of 12 to 14 pounds on a pallet; rolling rolls of paper onto a paper converting machine using either a hoist or an electric paper mover; changing rolls of labels for different products; and loading flat cases into a case packer.

The claimant has suffered two separate compensable injuries while working for the respondent. The first occurred on March 10, 2003 when claimant suffered a compensable injury to his neck and head when his head struck a ladder. Claimant's second injury occurred on December 17, 2003 to his forearms and elbow area as a result of pulling on a pallet.

Claimant's initial medical treatment for his neck and head injury was from Dr. Wilson on March 14, 2003. Dr. Wilson ordered x-rays of the claimant's cervical spine which returned normal. Dr. Wilson prescribed claimant medication, a cervical collar, and released claimant to return to work with restrictions. Subsequently, claimant was evaluated by Dr. Moffitt on April 17, 2003. Dr. Moffitt diagnosed claimant's condition as a contusion of the head and indicated that claimant could continue working without restrictions. Dr. Moffitt ordered x-rays of the claimant's head and cervical spine which were read as normal. As a result, Dr. Moffitt referred claimant to physical therapy and in a report dated May 20, 2003, noted that the physical therapy had improved claimant's condition. He released claimant to return to full duties and indicated that claimant had suffered no permanent impairment.

Claimant subsequently suffered the injury to his bilateral arms and elbows in December 2003 and was evaluated by Dr. Berestnev. At the same time claimant was seeing Dr. Berestnev for complaints in his elbows, he also made additional complaints of pain relating to his prior head and neck injury. In reports dated February 13, 2004, Dr.

Berestnev noted that x-rays of the claimant's elbows were negative. He assessed claimant's condition as bilateral elbow strain, provided medication and lifting restrictions. With respect to the claimant's head and neck, Dr. Berestnev indicated that his assessment was a contusion of the head with occasional neck pain. He prescribed stretching exercises and medication.

When claimant's neck and head symptoms persisted, Dr. Berestnev ordered an MRI scan of the claimant's cervical spine. That MRI scan returned normal with the exception of some mild degenerative changes. Dr. Berestnev in a report dated March 5, 2004 advised claimant to continue stretching exercises and take medication. He also released claimant to his regular work duties with respect to his head and neck.

As for the claimant's elbow complaints, Dr. Berestnev on February 20, 2004 gave claimant a steroid injection in the right elbow because it was worse than the left. In a report dated March 5, 2004, Dr. Berestnev noted that the claimant's right elbow is better after the injection; however, his left elbow is now worse. Dr. Berestnev's diagnosis on that date was bilateral elbow strain and right lateral epicondylitis. Dr. Berestnev ordered physical therapy for claimant's elbows and recommended work station modifications. He also continued claimant on medication.

In a report dated March 31, 2004, Dr. Berestnev noted that claimant's elbow complaints were out of proportion to the physical findings. However, because of claimant's continued complaints Dr. Berestnev ordered an MRI scan of claimant's elbows. The MRI scans were performed on April 15, 2004. The MRI scan of the left elbow revealed no focal abnormality. The MRI scan of the right elbow was read as showing: "Tiny elbow joint effusion otherwise unremarkable."

Subsequent to that date the claimant apparently came under the care of Dr. James Moore with regard to his elbows. Dr. Moore ordered a nerve conduction study test which was read as normal. In a report dated February 22, 2005 Dr. Moore indicated that

claimant's elbow condition was better and recommended that claimant take Ibuprofen for tendinitis as needed. He also released the claimant from his care and stated that he did not anticipate any permanent physical impairment.

Claimant has filed this claim requesting additional medical treatment with respect to both of his compensable injuries.

### ADJUDICATION

Respondent contends that claimant's claim for additional medical treatment for both of his compensable injuries is barred by the statute of limitations. Because benefits were paid on both of claimant's claims, his current claim is a claim for additional compensation. The statute of limitations regarding the time for filing claims for additional compensation benefits is codified at A.C.A. §11-9-702(b)(1) which requires claims for additional compensation benefits to be filed within one year from the date of last payment of compensation or two years from the date of injury, whichever is greater.

In this particular case, claimant had previously filed an AR-C requesting additional benefits on July 30, 2004. A hearing was not conducted on this claim and as a result the respondent filed a motion to dismiss the claimant's claim for failure to prosecute in July 2006. In a letter dated August 10, 2006, I informed the claimant that the respondent had filed a motion to dismiss his claim and requested that if he objected to the motion he should do so in writing and a hearing on the respondent's motion would be set. I also indicated that if claimant did not object or if I had not heard from him by August 30, 2006, an order dismissing his claim without prejudice would be entered. A copy of this letter was sent to the claimant by certified mail. The certified mail receipt card indicates that claimant signed for the letter on August 14, 2006. Although claimant testified that the signature on the card is not his, I find no merit to that argument. Claimant acknowledged that the address to which the letter was sent was his address and has been his address for several

years.

When no objection was received from the claimant, an order dismissing this claim without prejudice was filed on September 6, 2006. That order was not appealed. Claimant's most recent AR-C requesting additional benefits was filed on November 7, 2006. Payment records submitted by the respondent at the time of the hearing indicate that the last payment of medical benefits occurred no later than March 28, 2005, for medical treatment previously received by claimant from Dr. Moore.

In *Dillard v. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), the Court of Appeals noted that there are two types of claims, initial claims where no previous workers' compensation benefits have been paid and claims for additional benefits where benefits have previously been paid. The court noted that in claims for additional benefits a claim is barred unless it is filed within one year from the date of last payment of compensation or two years from the date of injury, whichever is greater. The court also noted that if a claim is dismissed, the claim is considered to have never been filed and unless a new claim is filed within the statutory period of time the statute of limitations bars any subsequent claims.

In this particular case, claimant filed his first claim for additional benefits on July 30, 2004. A hearing was not requested on those benefits and two years later the respondent filed a motion to dismiss the claim for failure to prosecute in July 2006. Notice of the respondent's motion to dismiss was provided to the claimant by certified mail. When claimant did not respond to the respondent's motion, an order dismissing the claim without prejudice was filed on September 6, 2006. Because the claim was one for additional compensation benefits, a hearing was not required by statute. In addition, reasonable notice was provided to claimant as required by Commission Rule 099.13. The effect of the dismissal on September 6, 2006 was that the claim of July 30, 2004 is considered to have never been filed. See, *Dillard vs. Benton County Sheriff's Department*, *supra*. Thus,

claimant's claim for additional compensation benefits will be barred unless his most recent claim on November 7, 2006 was filed within one year from the date of last payment of compensation or two years from the date of injury. Here, the last payment of compensation benefits occurred by at least March 28, 2005. Therefore, the filing on November 7, 2006 was not within the one year time period. Likewise, the claim on November 7, 2006 was not filed within two years from the date of injury. Accordingly, I find that the claimant's claim for additional compensation benefits filed on November 7, 2006 is barred by the statute of limitations.

Furthermore, even if the claimant's claim for compensation benefits were not barred by the statute of limitations, I would nevertheless find that claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for either of his compensable injuries. The medical evidence indicates that claimant has been released by his treating physicians with respect to both his neck and elbow injuries. Multiple tests have been performed on the claimant with respect to both of these injuries, including x-rays, MRI scans, and nerve conduction studies. All of those tests have returned essentially negative with the exception of degenerative conditions and "tiny elbow joint effusion" of claimant's right elbow.

Significantly, Dr. Berestnev in his report of March 31, 2004 noted that claimant's complaints were out of proportion to his physical findings.

Mr. Torres' complaints are out of proportion to the physical findings. He is still complaining of pain in his elbows, worse on the left than on the right. He said that he has had less pain at the elbows before the treatment and after the treatment the patient contributes all of the pain to work and pretty much has new symptoms every time we see him here.

There are a lot of subjective complaints and no objective findings.

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ASSESSMENT: Bilateral elbow strain, predominance of subjective complaints.

In summary, claimant has been evaluated by numerous physicians, including a specialist, Dr. Moore. Claimant has undergone numerous objective testing including x-rays, MRI scans, and a nerve conduction study. Those tests have returned essentially normal showing only degenerative conditions and “tiny” swelling in claimant’s right elbow. Claimant has been released by all of his treating physicians.

Accordingly, based on the foregoing evidence, I find that even if claimant’s claim for additional benefits were not barred by the statute of limitations that he has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for either of his compensable injuries.

#### ORDER

Claimant’s claim for additional benefits is barred by the statute of limitations. Claimant’s claim for additional compensation benefits was not filed within one year from the date of last payment of compensation or two years from the date of injury. Furthermore, even if claimant’s claim for additional benefits were not barred by the statute of limitations, I find that claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for either of his compensable injuries. Therefore, claimant’s claim for additional compensation benefits is therefore denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE