

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM E609910

**BRADLEY ALAN WHITE,
EMPLOYEE**

CLAIMANT

**NABHOLZ CONSTRUCTION CORP.,
EMPLOYER**

RESPONDENT

**ST. PAUL FIRE &
MARINE INS. CO.,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED MARCH 21, 2007,

Pursuant to a hearing conducted January 3, 2007, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. James W. Stanley, Jr., Attorney at Law, Little Rock, Arkansas, appearing for the claimant and

Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This was a hearing to address the issues of the statute of limitations and the claimant's request for a change of physician, relating to his compensable injury of July 24, 1996.

The claimant contended that he should be permitted to change physicians to an orthopedic surgeon for additional care for the injuries suffered during his 1996 injury. He further contended that his claim was not barred by the statute of limitations because his Form C was timely filed in 1998 and has not been dismissed. An attorney's fee for controversion was also requested. Other possible issues, such as wage loss disability, were reserved.

The respondents contended that the claim is barred by the statute of limitations. Specifically, they contended that the injury occurred on or about July 24, 1996; indemnity benefits were last paid January 13, 1999, in a lump sum distribution; medical benefits were last paid for medical services

rendered June 11, 2002; a Form AR-4 was filed October 30, 2000, effectively dismissing the claim; and, subsequently, no Form C has been filed and the statute of limitations has run. They further contended that any medical problem the claimant now has is related to subsequent accidents or work activity, but not to his compensable injuries, so that he is not entitled to additional medical care or a change of physician.

The record, which included documentary evidence and the testimony of the claimant and Sheila Hall, was closed at the conclusion of the hearing consistent with the Prehearing Order and Ark. Code Ann. §11-9-715(c).

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employee-employer-insurance carrier relationship existed at all pertinent times; the claimant sustained compensable injuries July 24, 1996; his average weekly wage was \$296.67; his injuries resulted in anatomical impairment of 23% to the body as a whole and 15% to his ankle; claimant's Form C was timely filed on or about June 10, 1998, within two years of the date of injury; respondents paid benefits for his impairment by lump sum distribution January 13, 1999; the respondents last paid medical benefits for medical services rendered June 11, 2002; no hearing was requested on behalf of the claimant until on or about August 31, 2006, when a letter from claimant's counsel was received by the Commission.

3. Because a claim for additional benefits was timely filed, the request for a Change of Physician is not barred by the statute of limitations.

4. The claimant is entitled to a one-time change of physician and an initial examination, pursuant to Ark. Code Ann. §11-9-514, pursuant to the direction of the Director of Medical Cost Containment.

5. For prevailing on the issue of Change of Physician, claimant's counsel is entitled to the maximum statutory attorney's fee of \$200.00, pursuant to Ark. Code Ann. §11-9-715.

DISCUSSION

This claim arises from injuries suffered by the claimant during employment with the respondent employer when he fell about 30 to 35 feet while working at an airplane hanger, injuring his leg and low back. He was afforded prompt medical attention and underwent surgery on his left ankle, as well as back surgery, a lumbar decompression and fusion. During this time, he developed an infection which required long-term intravenous antibiotic therapy and he had difficulty regaining his ability to walk.

The respondents first assert that the claim is now barred by the statute of limitations, although they initially provided medical benefits, temporary total disability benefits, and benefits for his permanent anatomical impairment, which were paid in a lump sum January 13, 1999. Respondents last paid benefits for medical services rendered June 11, 2002.

However, as stipulated by the parties, on June 10, 1998, the Commission received a timely claim form requesting initial and additional benefits. Because initial benefits had already been paid, the claim is considered a claim for additional benefits. This claim has not been dismissed, even though respondents filed a Form AR-4 October 30, 2000, and no hearing was requested by the

claimant until on or about August 31, 2006. Respondents contend that the Form AR-4 effectively dismissed the claim, although its filing is merely a reporting requirement, imposed on respondents by Ark. Code Ann. §11-9-810, and permitting respondents to avoid the imposition of a penalty, but having no other legal effect.

As to the issue of limitations, respondents rely, in part, on Eskola v. Little Rock School District, 93 Ark. App. 250 (2005), which held that a claim for additional benefits was barred when filed more than two years after the initial injury and more than one year after the last payment of compensation, a circumstance which distinguishes that case from this one where the claim for additional benefits was timely filed within both the two year and one year periods.

Respondents further contend that the claimant is not entitled to change physicians or additional medical care because his current condition is the result of his work activity with other employers or injuries from a September, 2004, motor vehicle accident, which caused the claimant to cease working. The claimant denies that the motor vehicle accident or other work activity affected his compensable injuries.

Moreover, it should be noted that, at this time, the claimant has merely requested a change of physician, rather than additional medical care. While the respondents' argument may eventually be persuasive, should the claimant seek additional medical care, it is no defense to his current request to change physicians and to have the associated initial examination.

There is no dispute that the claimant has yet to exercise his right to have a change of physician, a right which includes an initial examination, but does not expand the claimant's entitlement to additional medical care, which continues to be limited to such care as may be reasonably necessary in connection with his compensable injury. Ark. Code Ann. §11-9-508.

AWARD

Pursuant to the foregoing opinion, Commission policy, and the law, the claimant is entitled to a one-time change of physician and an initial examination. Accordingly, the file will be forwarded to the Office of the Clerk for assignment to the Medical Cost Containment Division for the purposes of processing the claimant's request to change physicians and arranging the initial appointment. For prevailing on the claimant's request to change physicians, the claimant's attorney is awarded to the maximum statutory attorney's fee.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge