

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F704203

ANDY BAILEY	CLAIMANT
WEBB PLUMBING, INC.	RESPONDENT
WESTPORT INSURANCE, INSURANCE CARRIER	RESPONDENT

OPINION FILED **JUNE 19, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

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

Respondents represented by WILLIAM FRYE, Attorney, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on June 16, 2008, in Springdale, Arkansas. This hearing was held as a result of the Respondents' Motion to Dismiss for lack of prosecution and pursuant to Ark. Code Ann. §11-9-702(d).

A copy of the Respondents' Motion was made Commission's Exhibit No. 1 to the hearing. A copy of the claimant's response, together with a copy of a letter from the claimant was made Commission's Exhibit No. 2 to the hearing. The entire remainder of the file was made Commission's Exhibit No. 3 to the hearing and incorporated by reference in the current transcript.

DISCUSSION

_____This claim was initially accepted as compensable by the respondents and certain benefits were paid. On May 31, 2007, an AR-C was filed on behalf of the claimant by his current attorney. This AR-C indicated that it was both an initial claim for benefits and a claim for additional benefits. All the possible

benefits granted by the Act were checked on this form. At that same time, a hearing was requested by the claimant's attorney.

A pre-hearing conference was subsequently held on July 30, 2007, and an appropriate pre-hearing order was entered on July 31, 2007. This pre-hearing order indicated that the issues to be litigated, at that time, was the claimant's entitlement to additional medical services (after June 26, 2007) and his entitlement to temporary total disability benefits for the period of April 19, 2007 through a date yet to be determined. Appropriate attorney's fees were also to be addressed.

A hearing was subsequently held in regard to these issues on September 24, 2007. As a result of this hearing, an Opinion was entered on November 7, 2007. In this Opinion, the disputed issues were addressed. The claimant was awarded various identified medical services that had been provided him by Dr. Hood, together with continued follow up visits with Dr. Hood. The claimant was also awarded temporary total disability benefits for the period of April 23, 2007 through July 3, 2007. Appropriate attorney's fees were awarded on the controverted temporary total disability benefits. It appears that this Opinion was not appealed and became final. Apparently, the benefits awarded have been paid.

Since the entry of this Opinion, no other hearing has been requested on the other numerous benefits that were originally identified on the AR-C. The respondents had requested a dismissal of these purported claims for additional benefits and initial benefits identified on the AR-C for the claimant's failure to request a hearing on these benefits or otherwise seek to pursue these benefits during the previous 6 months.

In her formal response and statements at the hearing, claimant's counsel indicates that the claimant may well seek additional benefits in the future, but is unable to do so at the present time due to his incarceration in the Arkansas Department of Corrections.

Clearly, the Act does not provide for a tolling of the Statute of Limitations if the claimant is incarcerated. Nor, is the mere chance that the claimant might be entitled to some type of benefits at some future date sufficient grounds to allow the claimant to toll the Statute of Limitations by keeping open his initial "shotgun" claim for all possible benefits allowed by the Act. The Act requires the claimant to identify the benefits to which he believes himself entitled and to expeditiously pursue his claim for such benefits.

If the claimant currently believes himself entitled to some benefit provided by the Act, which the respondents have not voluntarily furnished, it is the claimant's obligation to timely prosecute a claim for this particular benefit. The fact that the claimant may be incarcerated in the Department of Corrections does not release him from this obligation.

The respondents are entitled, under the provisions of Ark. Code Ann. §11-9-702(d) to a dismissal without prejudice of any currently pending claims for additional benefits, so as to commence the running of the Statute of Limitations provided by Ark. Code Ann. §11-9-702(b) in regard to such benefits. The Respondents' Motion should be and hereby is granted.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On April 18, 2007, the relationship of employee-employer-carrier existed between the parties.

3. On April 18, 2007, the claimant sustained a compensable injury to his neck and back.

4. Certain benefits were voluntarily paid by the respondents and additional benefits have been specifically awarded by this Commission. Thus, any pending claims for benefits would represent claims for additional benefits. Ark. Code Ann. §11-9-702(d) requires that the claimant request a hearing on such benefits within 6 months.

5. No hearing has been requested within the previous 6 months on any additional benefits indicated in the AR-C previously filed in this claim, which were not addressed in the prior Opinion.

6. The claimant's incarceration in the Department of Corrections does not relieve him of the obligation to request a hearing on any claim for additional benefits within 6 months of the filing of such a claim, as required by Ark. Code Ann. §11-9-702(d).

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to dismiss any pending claims for additional benefits, pursuant to the provisions of Ark. Code Ann. §11-9-702(d). This dismissal is without prejudice to refiling any claims for additional benefits within the time period allotted by Ark. Code Ann. §11-9-702(b).

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE