

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F001242

DAVID CREEK, Employee	CLAIMANT
CITY OF SPRINGDALE, Employer	RESPONDENT
MUNICIPAL LEAGUE WCT, Carrier	RESPONDENT

OPINION FILED AUGUST 19, 2008

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

Claimant represented by AARON MARTIN, Attorney, Fayetteville, Arkansas.

Respondents represented by J. CHRIS BRADLEY, Attorney, No. Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 23, 2008, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on May 28, 2008, and a pre-hearing order was filed on May 29, 2008. 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 relationship existed between the parties on January 27, 2000.
3. The claimant was earning sufficient wages to entitle him to compensation at the maximum weekly rates.

The parties have also agreed to stipulate that claimant suffered a compensable injury while working for respondent on January 27, 2000.

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

1. Claimant's entitlement to additional medical treatment.

2. Statute of limitations.

The claimant contends he is entitled to additional treatment received. The claimant contends that the treatment received was reasonable, necessary, and in connection with his compensable injuries. Further, claimant contends that this claim is not barred by the statute of limitations because the respondent continued to furnish treatment and failed to communicate to the claimant that it was controverting additional medical.

The respondents contend this claim is barred by the statute of limitations.

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 May 28, 2008, and contained in a pre-hearing order filed May 29, 2008, are hereby accepted as fact. The parties' stipulation that claimant suffered a compensable injury on January 27, 2000 is also hereby accepted as fact.

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

FACTUAL BACKGROUND

_____The claimant is a 53-year-old man who was employed by the respondent as a firefighter and he suffered a compensable injury on January 27, 2000. On that date, claimant and other firefighters responded to a fire in Johnson. As claimant was engaged in firefighting a 3000 pound section of roof collapsed and fell on him. Claimant suffered multiple injuries as a result of this accident including fractures to his pelvis, spine, and ribs.

Claimant underwent reconstructive spine surgery which included a T-11, T-12, L-1, L-2, and L-3 fusion and a cage implant at L-1.

The surgery on claimant's lumbar spine was performed by physicians in Oklahoma City and claimant subsequently came under the care of Dr. Luke Knox, a neurosurgeon in Northwest Arkansas, and Dr. Larry Weeks, a chiropractic physician in Northwest Arkansas.

In a report dated August 15, 2001, Dr. Knox indicated that claimant had reached maximum medical improvement even though he continued to receive medical treatment. He went on to note that claimant was receiving chiropractic treatment from Dr. Weeks and that such treatment may be necessary for some time. Claimant has continued to periodically receive treatment from Dr. Weeks.

Claimant was off work for approximately six months after his injury and after performing some limited duty work he was given a full release with no restrictions. Claimant has continued to work for the respondent as a firefighter since that time.

Claimant testified that since his accident in January of 2000 he has always noticed some limited range of motion with his left leg as compared to his right leg. Claimant testified that in the fall of 2007 he noticed a "sudden onset" of left hip pain and mentioned these complaints to Dr. Powell, a physician who was treating him for his right knee and left shoulder. No claim has been filed at this point contending that those conditions are the result of claimant's job activities with the respondent. While claimant was receiving medical treatment from Dr. Powell he informed Dr. Powell of his increased left hip pain. As a result of claimant's left hip complaints Dr. Powell ordered an MRI scan which revealed degenerative changes and a "near complete loss of articular cartilage and diminutive labrum." Claimant was subsequently evaluated by Dr. Heim who gave claimant an injection in his hip and has discussed potential hip replacement surgery with the claimant.

Claimant has filed this claim contending that he is entitled to additional compensation benefits in the form of medical treatment for his compensable injury.

ADJUDICATION

Based upon claimant's increased left hip pain he has been evaluated and treated by both Dr. Powell and Dr. Heim. Dr. Heim has treated claimant with an injection and has discussed potential hip replacement surgery with the claimant. Claimant contends that this condition is causally related to his original compensable injury and seeks payment of medical benefits. Dr. Heim in his report of March 28, 2008 indicates that in his opinion the claimant's condition is causally related to the January 2000 injury. Although the respondent initially accepted this claim as compensable and paid compensation benefits, respondent now contends that claimant's claim for additional compensation benefits is barred by the statute of limitations.

The time for filing a claim for additional compensation benefits is codified at A.C.A. §11-9-702(b)(1). In cases where any compensation benefits have been paid a claim for compensation is barred unless a claim is filed with the Commission 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's AR-C form requesting additional benefits was signed by him on February 19, 2008. Clearly, this was more than two years after the date of injury. The issue then becomes whether claimant filed his claim for additional compensation benefits within one year from the date of last payment of compensation. It is the furnishing of medical treatment, not the actual payment for those services, which constitutes payment of compensation for purposes of the statute. *Heflin v. Pepsi-Cola Bottling Company*, 195 Ark. 244, 424 S.W. 2d 365 (1969). Payment records introduced by the respondent indicate that it last "furnished" medical treatment on July 17, 2003, from the Northwest Arkansas Neurosurgery Clinic. That medical treatment was paid for by the respondent on December 1, 2003. Respondent has not paid for any medical treatment since that time.

Claimant argues that the respondent has continued to furnish medical treatment because it was aware that claimant was continuing to receive medical treatment from Dr. Weeks for his compensable injury, even though respondent did not pay for that treatment.

The courts and the Commission have held that a respondent does furnish medical treatment if it has actual or constructive knowledge that a claimant is receiving medical treatment or that the claimant will require further medical treatment. However, this only continues until the respondent communicates to the claimant that it is controverting further medical treatment. In *Jack v. Around the World Travel*, Full Commission Opinion filed June 15, 2005 (D916900), the Commission stated:

Where a respondent furnishes medical treatment and has either actual or constructive knowledge that the claimant is receiving medical treatment or that the claimant will require further medical treatment, the respondent continues to furnish medical treatment until it communicates to the claimant that it is controverting the claimant's entitlement to further medical treatment. Plante v. Tyson Foods, Inc., 319 Ark. 126, 890 S.W. 2d 253 (1995); see also, Safeway Stores, Inc. v. Lamberson, 5 Ark. App. 191, 634 S.W. 2d 396 (1982).

The Commission has reiterated this ruling in *May v. Travis Lumber Company*, Full Commission Opinion filed May 31, 1998 (E202970); and *Dickens v. Georgia-Pacific Corporation*, Full Commission Opinion filed October 7, 1996 (D402747).

In this particular case, I believe that the respondent did have actual knowledge that claimant was continuing to receive medical treatment for his compensable injury from Dr. Weeks. Claimant's primary treating physician, Dr. Knox, had indicated that claimant would need continued chiropractic treatment for a period of time and respondent initially paid for this chiropractic treatment. However, at some point in 2003 claimant became aware that the respondent was no longer going to pay for treatment from Dr. Weeks. As a result, claimant filed his bills from Dr. Weeks with his group insurance which paid for Dr. Weeks'

treatment. Claimant did not file a claim for additional benefits until 2008. While claimant testified that he did not recall receiving a letter from the respondent indicating it was no longer paying medical bills for his compensable injury, he did admit that he was aware that respondent was no longer paying when he was given a bill by Dr. Weeks' secretary. As a result, claimant filed for benefits from his group health insurance.

In summary, a claim for additional compensation benefits must be filed within two years from the date of injury or one year from the date of last payment of compensation. Here, claimant's claim for additional compensation benefits was not filed until February 2008. Clearly, this was more than two years after claimant's injury in January 2000. The evidence also indicates that the filing of the claim in February 2008 was more than one year from the date of last payment of compensation by the respondent. Payment records from respondent indicate that it last "furnished" medical treatment on July 17, 2003. While claimant continued to receive medical treatment from Dr. Weeks subsequent to that date, claimant was aware that the respondent was no longer accepting liability for payment of medical treatment associated with his compensable injury. Therefore, it cannot be said that the respondent was "furnishing" additional medical treatment.

In reaching this decision, I do acknowledge that this claimant suffered an admittedly compensable injury as a result of his employment with the respondent on January 27, 2000. I also believe that there is sufficient credible evidence indicating that claimant's current problems with his left hip are causally related to that original compensable injury. However, Arkansas Workers' Compensation law requires that claims for additional compensation benefits be filed within one year from the date of last payment of compensation or two years from the date of injury, whichever is greater. Unfortunately, claimant's claim for additional compensation benefits in February 2008 was more than two years after the date of injury and more than one year from the date of last payment of compensation in 2003 when claimant became aware that respondent was no longer paying

for medical treatment.

The reasons for imposing a limitations period on claims no matter the merit of that claim was discussed by the court in *Owen v. Wilson*, 260 Ark. 21, 537 S.W. 2d 543 (1976). There, the Arkansas Supreme Court quoted *Chase Securities Corporation v. Donaldson*, 325 U.S. 304, 65 S. Ct. 1137, 89 L. Ed., 1628 (1945):

Statutes of limitations find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles. They are practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizens from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost. [Citation omitted.] They are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the avoidable and unavoidable delay. They have come into the law not through the judicial process, but through legislation. They represent a public policy about the privilege to litigate.

Thus, while claimant's claim may be just, his filing of a claim for compensation benefits in February 2008 was not timely pursuant to A.C.A. §11-9-702(b)(1).

ORDER

Claimant's claim for additional compensation benefits is barred by the statute of limitations. Claimant's claim for additional compensation benefits filed in February 2008 was more than one year from the date of last payment of compensation benefits in July 2003 and more than two years from the date of his injury. Therefore, claimant's claim is hereby respectfully denied and dismissed.

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$766.50.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE