

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E711875

DAVID HELMS,
EMPLOYEE

CLAIMANT

GENERAL ELECTRIC RAILCAR REPAIR,
EMPLOYER

RESPONDENT NO. 1

ELECTRIC INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

OPINION FILED MAY 28, 2008

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK
CHURCHWELL in Texarkana, Miller County, Arkansas.

The claimant was represented by HONORABLE THOMAS H. JOHNSON,
Attorney at Law, Texarkana, Arkansas.

Respondent No. 1 was represented by HONORABLE LEE J.
MULDROW, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 waived appearance at the hearing.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on May 1,
2008, in Texarkana, Arkansas. A Prehearing Order was
entered in this case on March 11, 2008. This Prehearing
Order identified no stipulations but outlined the issues to
be litigated and resolved at the present time. A copy of
the Prehearing Order was made Commission's Exhibit No. 1 to
the hearing record.

The following stipulation was submitted by the
attorneys at the May 1, 2008, hearing:

1. The last payment of compensation on this claim, as identified in the Respondent's Exhibit No. 1, was paid on May 22, 2001. (T. 6)

By agreement of the parties, the issues to be litigated and resolved at the present time are limited to the following:

1. Whether the statute of limitations bars the claimant's pending request for compensation.

The record consists of the May 1, 2008, hearing transcript and the exhibits contained therein. In addition, I have blue-backed to designate as part of the record Mr. Muldrow's Post-Hearing Brief filed on May 21, 2008, and Mr. Johnson's Post-Hearing Brief filed on May 21, 2008.

DISCUSSION

On September 17, 2007, the Commission received from Mona D. Rigdon, paralegal to Attorney Thomas H. Johnson, a request for a hearing on claim number E711875. The respondents contend that the claimant's present request for additional benefits is barred by the statute of limitations.

The applicable statute of limitations is set out in Arkansas Code Annotated Section 11-9-702(b) (Repl. 2002):

(b) TIME FOR FILING ADDITIONAL COMPENSATION. (1) 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 the last payment of compensation or two (2) years from the date of the injury, whichever is greater.

The timely filing of a claim for additional benefits tolls the statute of limitations. Spencer v. Stone Container Corp., 72 Ark. App. 450, 38 S.W.3d 287 (2004). However, if that claim is dismissed for lack of prosecution, the claim is considered to have never been filed. Single Source Transp. v. Kent, 99 Ark. App. 53, ___ S.W.3d ___ (2007); Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W.3d 287 (2004). Unless a new claim is filed within the period of time allowed by Arkansas Code Annotated Section 11-9-702, the statute of limitations bars any subsequent claims. Single Source Transp. v. Kent, 99 Ark. App. 53, ___ S.W.3d ___ (2007).

In the present case, a Form AR-C for Mr. Helms' September 20, 1997, injury, signed by Mr. Helms, was timely filed at the Commission on October 23, 1997. Mr. Helms' September 20, 1997, injury and claim filed on October 23, 1997, were assigned Commission claim number E711875. Administrative Law Judge J. Mark White later filed an order dismissing claim number E711875 on January 31, 2005, for failure to prosecute the claim. ALJ White's Order of

Dismissal was received at the office of Mr. Johnson on February 4, 2005. By letter received at the Commission on September 17, 2007, Mr. Johnson's paralegal, Mona D. Rigdon, requested a hearing before an administrative law judge on Mr. Helms' behalf on claim number E711875.

Because Mr. Helms' claim filed on October 23, 1997, was dismissed for lack of prosecution on January 31, 2005, Mr. Helms' claim filed on October 23, 1997, must be treated as having never been filed under the ruling in Single Source Transp. v. Kent, Supra. Therefore, pursuant to Arkansas Code Annotated Section 11-9-702(b), Mr. Helms' new filing of September 17, 2007, which was filed more than two years after his reported injury date of September 20, 1997, is time-barred unless Mr. Helms received medical or indemnity compensation within the one-year period immediately proceeding September 17, 2007. However, the parties have stipulated that Mr. Helms last received compensation over six years earlier on May 22, 2001.

Because Mr. Helms' request filed on September 17, 2007, was filed more than two years after his injury and more than one year after the last payment of compensation, I am constrained by law to find that Mr. Helms' present claim for additional benefits for his injury sustained on September

20, 1997, is barred by the applicable statute of limitations in Arkansas Code Annotated Section 11-9-702(b). On that basis, I find that the present request for additional benefits on claim number E711875 must be denied and dismissed.

In reaching this conclusion, I note that the claimant's attorney argues in his Post-Hearing Brief that ALJ White's Order of Dismissal on January 31, 2005, does not state with specificity the types of claims which were being dismissed. In addition, the brief argues that the initiation for the request for dismissal was by letter and not by formal motion of the respondents, such that without a formal motion the matter should not have been up for consideration. In addition, the brief contends that the Order of Dismissal Without Prejudice should have been precise and succinct as to whether one, two, or more of the claimant's claims were being dismissed and that without doing so the Order of Dismissal was ambiguous and should not be binding upon the claimant.

For my part, I note that ALJ White's January 31, 2005, Order of Dismissal identifies by name the claimant, the employer, the workers' compensation insurance carrier, and the Second Injury Fund. The dismissal order also identifies

the Commission's claim number for the case. If the claimant has any claims pending before the Commission in addition to claim number E711875 (for the injury sustained on September 20, 1997), those additional claims were not identified in the order filed by ALJ Mark White. For my part, I have not identified any legal defect on the face of ALJ White's Order, and the claimant's brief has not cited me to any authority to support his contentions that ALJ White's Order of Dismissal is not binding upon the claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The claimant filed a claim for benefits on October 23, 1997, for injuries sustained in an accident on September 20, 1997.
2. Administrative Law Judge J. Mark White filed an order dismissing that claim on January 31, 2005, for failure to prosecute the claim.
3. Mona D. Rigdon, paralegal to Thomas H. Johnson, filed a request for a hearing in claim number E711875 received at the Commission on September 17, 2007.
4. The respondents last provided compensation to Mr. Helms on May 22, 2001.

5. Because Mr. Helms' claim filed on October 23, 1997, was properly dismissed for lack of prosecution on January 31, 2005, Mr. Helms' claim filed on October 23, 1997, must be treated as having never been filed under the ruling in Single Source Transp. v. Kent, 99 Ark. App. 53, ___ S.W.3d ___ (2007).
6. Because the claim filed on September 17, 2007, was filed more than two years after the date of injury and more than one year after the last payment of compensation, Mr. Helms' claim for additional compensation at issue herein filed in 2007 is time-barred by the statute of limitations.

ORDER

For the reasons discussed herein, this claim must be, and hereby is, respectfully dismissed.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge