

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F500005

CHRISTINA KEENE

CLAIMANT

McGEE FOODS
SELF INSURED

RESPONDENT

OPINION FILED **JULY 25, 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 CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' Motion to Dismiss on July 21, 2008, in Springdale, Arkansas. Although the claimant's attorney was present at the hearing, the claimant did not appear. Notice of the hearing, which was sent to the claimant, was returned by the U. S. Post Office as unclaimed. At the hearing, the claimant's attorney announced that she, too, had made various attempts to contact the claimant, concerning this proceeding, but had been unsuccessful.

The entire Commission file was made Commission's Exhibit No, 1 and was incorporated by reference in the transcript of the current proceeding.

DISCUSSION

_____An ARC was first filed by the claimant on January 3, 2005. This ARC alleged a compensable injury to the claimant's right shoulder, elbow, and wrist/hand, as the result of cumulative repetitive trauma during the course of her employment with the respondent. In this ARC, the claimant indicated that she was requesting essentially every conceivable benefit allowed by the Act. She further indicated that she was requesting both initial and additional benefits.

As the result of this claim, a pre-hearing conference was held and a pre-hearing order was entered. This pre-hearing order identified the issues to be litigated and resolved at that time. Pursuant to the pre-hearing order, a hearing was held in the claim on May 2, 2005. Ultimately, an Opinion was entered on July 13, 2005. This Opinion found that the claimant had proven that she sustained compensable injuries to her right shoulder and right wrist as the result of cumulative trauma produced by her day to day employment activities. It was further found that she had failed to prove that she sustained a compensable injury to her right elbow. Finally, this Opinion awarded the claimant reasonably necessary medical services for the compensable injuries to her right shoulder and wrist/hand, along with temporary total disability benefits from November 1, 2004 through at least, February 18, 2005. By Opinion dated December 15, 2005, the initial Administrative Law Judge Opinion was affirmed and adopted by the Full Commission. No appeal was taken from the Full Commission Opinion and it subsequently became final.

On May 15, 2006, the claimant requested a change of physicians by this Commission from Dr. Bryan Benafield to Dr. Chris Arnold. The claimant was initially granted a change of physicians from Dr. Benafield to Dr. Mark Powell, by Order dated June 20, 2006. This Order was subsequently amended and the claimant was granted a change of physicians from Dr. Benafield to Dr. Christopher Arnold , by an Order dated July 11, 2006.

On April 30, 2007, the claimant's attorney requested a hearing on the claimant's right to receive additional medical treatment for her compensable injuries. A pre-hearing conference was held and a pre-hearing order was entered on June 12, 2007. The pre-hearing order stated that the matter to be litigated was the claimant's entitlement to additional medical services for her

compensable right hand/wrist and shoulder injuries. A hearing was set on this claim for additional benefits for July 30, 2007. This hearing was rescheduled for August 13, 2007. Before the scheduled hearing, the respondents agreed to provide the additional medical services requested. As a result, the scheduled hearing was cancelled and the file was returned to the general files as inactive.

The claimant appears to have received additional evaluations and treatment as the result of the agreement between the parties from Dr. Benafield. No further action was taken to pursue any remaining or outstanding claims for benefits. On April 21, 2008, the respondents filed the current Motion, which sought a dismissal without prejudice of any outstanding or pending claims for benefits based upon the claimant's failure to request a hearing on these claims within the previous six months or take any other action to pursue any pending or outstanding claims. The claimant's attorney filed a letter objecting to this dismissal.

The initial hearing on the Respondents' Motion which was scheduled for June 2, 2008, was cancelled. Instead, the matter was set for an additional pre-hearing conference on June 9, 2008.

At the pre-hearing conference, no disputed additional benefits could be identified. Thus, no hearing on the claimant's entitlement to such benefits was necessary or appropriate. The matter was then reset for hearing on the Respondents' Motion to Dismiss any previous claims, so as to prevent them from tolling the statute of limitations. This hearing was held on July 21, 2008.

After consideration of all the evidence presented, it is my opinion that there are no bonafide pending claims for initial or additional benefits at the present time, to allow the "shot gun" claims made in the original ARC to continue to indefinitely toll the statute of limitations. This would be contrary

to the intent and purpose of Ark. Code Ann. §11-9-702(b). Thus, I find that the Respondents' Motion is well taken and should be granted.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On all relevant dates in 2004, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. During her employment with the respondent in 2004, the claimant sustained compensable injuries to her right shoulder and wrist/hand, as defined by Ark. Code Ann. §11-9-102(4)(A)(ii)(a).

4. All appropriate benefits to which the claimant is entitled, through the present date, have been provided by the respondents, either pursuant to an Order or Award pursuant to this Commission or voluntarily. At the present time, all benefits to which the claimant is entitled under the Act, have or are being provided. There remains no bonafide claims for additional benefits, which should or would act to toll the statute of limitations provided by Ark. Code Ann. §11-9-702(b).

5. There has been no bona fide request for a hearing within six months prior to the filing of the Respondents' current Motion. Pursuant to Ark. Code Ann. §11-9-702(d), the respondents are entitled to a dismissal of any pending claims for additional benefits, so as to commence the running of the statute of limitations. Such dismissal should be without prejudice to the refiling or filing of any further claims for additional benefits within the time provided by Ark. Code Ann. §11-9-702(b).

ORDER

Any pending claims for additional benefits should be and hereby are dismissed for the reasons heretofore stated in this Opinion. This dismissal is without prejudice to the refiling or the filing of any further claims for additional benefits within the time period provided by Ark. Code Ann. §11-9-702(b).

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE

July 25, 2008

Ms. Evelyn Brooks
Attorney at Law
P. O. Box 728
Fayetteville, AR 72702

Mr. Curtis Nebben
Attorney at Law
P. O. Box 3618
Fayetteville, AR 72702

Re: Christina Keene v. McKee Foods
WCC File: F500005

Counselors:

Enclosed please find a copy of an Opinion rendered this date, together with a copy of Appeal procedure.

Yours truly,

MICHAEL L. ELLIG
Administrative Law Judge

MLE:dg
Enclosure
Certified Mail
Return Receipt Requested
c:
Christina Keene
47155 South 699 Road
Jay, OK 74346