

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F704316**

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| <b>CHARLES MOUNT, EMPLOYEE</b>             | <b>CLAIMANT</b>   |
| <b>RAM FAB, INC., EMPLOYER</b>             | <b>RESPONDENT</b> |
| <b>BUSINESS INSURANCE COMPANY, CARRIER</b> | <b>RESPONDENT</b> |

**OPINION FILED AUGUST 4, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on May 7, 2008, at Hamburg, Ashley County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by the HONORABLE MARK ALAN PEOPLES, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses for a left ear injury.

At issue is whether or not this claim is barred by the statute of limitations, pursuant to Ark. Code Ann. § 11-9-702.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

**STATEMENT OF THE CASE**

The parties have agreed to the following stipulations: An employer-employee-carrier relationship on October 7, 1997, at which time the claimant sustained a compensable left ear injury. Medical expenses with Dr. Garcia, Dr. Toon, and Dr. Pillsbury were paid until January 1998. The claimant's AR-C for the ear injury is dated December 7, 2006. A companion case to this claim is Mount v. Ram-Fab (CNA), F107026, which involves a February 2000 back injury. CNA is

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represented by Attorney Frank Newell. An opinion was filed in that case on October 7, 2004, awarding permanent total disability benefits to the claimant. The claimant also receives Social Security Disability benefits.

The claimant contends that his right ear was injured on October 27, 1997 when a piece of welding slag perforated his ear drum. He was treated for infection with antibiotics and developed hearing loss. Although he was not released by his treating physician, the safety manager, Todd Bryant, would not allow him to leave work to seek treatment. The claimant is presently being followed by Dr. Gardner who has prescribed a hearing aid.

The respondents contend this claim is barred by the statute of limitations. The last payment of medical expenses was in 1998 and the claimant did not file a claim until 2006.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires in the transcript and the deposition of the claimant (taken 10-10-07) included by reference.

The following witnesses testified at the hearing: the claimant and his brother, John Mount.

The claimant (DOB 12-10-38) was injured in 1997 when he was standing inside a large pipe, inspecting a weld. Co-workers on the outside of the pipe were teasing him by hammering on the pipe. A piece of metal was dislodged and fell into the claimant's left ear. The injury was reported to the safety director, Thomas Williams, and the claimant was sent to Dr. Toon.

The claimant saw Dr. Toon on several occasions, but in 1999 the new safety manager, Todd Bryant, told the claimant, "if you want to (go) to the doctor, go on your own time and your own money," (Depo. p. 14).

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In 1999, the claimant sustained a work-related back injury. He was represented by Mr. Gene McKissick and later by Mr. Floyd Thomas. The respondent-employer had changed workers' compensation carriers to CNA at the time of the back injury. The claimant stated he brought up his ear injury in his deposition taken by Frank Newell, but this information was disregarded.

### **DOCUMENTARY EVIDENCE**

Thomas Williams, the former safety manager, authored a letter dated June 11, 2007:

...this injury was caused by a piece of hot metal slag that burned his inner ear. This caused Mr. Mount to suffer some hearing loss as well as other problems pertaining to his ear. I filled out the first report of his injury at the time of the incident.

There is also an undated "Workmans Comp" form from the respondent-employer explaining how bills would be paid through the carrier.

### **MEDICAL EVIDENCE**

The claimant initially saw Dr. Garcia and Dr. Donald Toon, who referred him to Dr. Richard Pillsbury. The claimant also saw Dr. Ward Gardner for a hearing aid.

In December 1997, Dr. Pillsbury treated the claimant with antibiotics for drainage from a perforated eardrum and pain in his ear. He also complained of ringing in his ear and diagnostic testing confirmed hearing loss. A notation on the report shows the doctor was in contact with Vicki Osmond at the respondent-employer's office.

Dr. Pillsbury's letter of 11-25-97:

...An audiological evaluation... shows a significant conductive hearing loss, more than what you would think the perforation would cause. However, he does have some debris (in the ear canal) that may be the cause of this hearing loss.

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At this time, I would use conservative treatment and wait and see if he doesn't heal this (sic). Because it's close to a marginal perforation, he may need a tympanoplasty done, but I want to watch him every month for the next several months.

The claimant returned to Dr. Pillsbury in January of 1998. The doctor opined that the infection had caused an enlargement of the perforation.

### **FINDINGS AND CONCLUSIONS**

In pertinent part, Ark. Code Ann. § 11-9-702 provides:

In cases in which 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 (1) year from the date of the last payment of compensation or two (2) years from the date of the injury, whichever is greater.

Mr. Charles Mount and his brother, Mr. John Mount, are both very nice gentlemen.

Unfortunately, a claim for the ear injury had to have been filed by October 7, 1999, in order to avoid the statute of limitations. In this case, the claim was not filed until December 7, 2006, and this case is now barred.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on October 7, 1997. No claim was filed until December 7, 2006.
2. This claim for an ear injury is barred by the statute of limitations.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge