

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F104163

JACQULYNE D. SMITH, EMPLOYEE	CLAIMANT
MILLCREEK OF ARKANSAS D/B/A/ YOUTH AND FAMILY SERVICES, EMPLOYER	RESPONDENT
AMERICAN HOME ASSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

**OPINION FILED MAY 16, 2008**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL in Fordyce, Dallas County, Arkansas.

The claimant was pro se.

The respondents were represented by HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on April 22, 2008, in Fordyce, Arkansas. An Interim Prehearing Order was entered in this case on April 24, 2007. This Prehearing Order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this Prehearing Order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties in the Prehearing Order and are hereby accepted:

1. The employee/employer/carrier relationship existed on November 1, 2000.

2. On or about November 1, 2000, the claimant sustained a compensable right wrist injury (including but not limited to carpal tunnel syndrome).

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

Claimant:

1. Additional medical treatment for November 1, 2000, carpal tunnel syndrome.

Respondents:

1. Whether the claimant is entitled to additional medical benefits.
2. Whether the claimant is entitled to weekly benefits (reserved).
3. Statute of limitations.

The record consists of the April 22, 2008, hearing transcript and the exhibits contained therein.

#### **DISCUSSION**

The claimant, Jacquelyne Smith, seeks additional medical benefits for an admittedly compensable right wrist injury which she sustained on November 1, 2000. Her employer, Millcreek of Arkansas, contends, among other things, that

the present claim for benefits is barred by the applicable statute of limitations.

**1. Evidentiary Objections**

Ms. Smith objected to Mr. Newell's introduction of her deposition as evidence at the hearing on the grounds that he did not identify to her the deposition as a hearing exhibit in advance of the hearing; consequently, she had not reviewed the document. The Prehearing Order filed on April 24, 2007, notified the parties that no documents will be allowed into evidence unless exchanged by the parties at least seven days before the hearing. Because Mr. Newell did not identify any documents notifying Ms. Smith at least seven days before the hearing that he intended to introduce her deposition as evidence at the hearing, I have not reviewed or considered any portion of Ms. Smith's deposition testimony in rendering a decision in this claim.

Ms. Smith also objected to introduction of certain medical reports in the respondent's 53 page exhibit on the grounds that she never received Mr. Newell's exhibit in the mail before the hearing and that she had never seen these particular reports in the material she previously received from Mr. Newell. On this objection, I note that Ms. Smith did not bring with her to the hearing any of the

correspondence that she had previously received from either Mr. Newell or me. I pointed out to Ms. Smith when considering her objection at the hearing that Mr. Newell copied both Ms. Smith and me on his letter of March 21, 2008, purportedly sending us both 53 pages of documents to be introduced at the hearing. I also pointed out to Ms. Smith that the copy I received from Mr. Newell in the mail in fact contained all 53 pages of the documents identified in the exhibit's table of contents, including the pages she claimed to have never seen before. Under these circumstances, I am accepting all of Mr. Newell's 53 page exhibit into the record.

## **2. 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 Ms. Smith's November 1, 2000, injury signed by Ms. Smith was timely filed at the Commission on April 18, 2001. However, Administrative Law Judge J. Mark White filed an Order dismissing that claim on November 15, 2005, for failure to prosecute the claim. ALJ White's Order of Dismissal was received at the office of Ms. Smith's attorney at that time, Philip Wilson, on November 21, 2005. By letter received at the Commission on January 17, 2007, Ms. Smith notified the Commission that she was terminating Attorney Philip Wilson. By letter received at the Commission on January 24, 2007, Ms. Smith requested a hearing in this case.

Because Ms. Smith's claim was dismissed for lack of prosecution on November 15, 2005, Ms. Smith's claim filed on

April 18, 2001, must be treated as having never been filed under the ruling in Single Source Transp. v. Kent, supra. Therefore, under the provisions of Arkansas Code Annotated Section 11-9-702(b), Ms. Smith's new filing of January 24, 2007, is time-barred unless Ms. Smith received medical or indemnity compensation within the one year period immediately preceding January 24, 2007. However, Ms. Smith's testimony and medical records both indicate that she last received treatment from Dr. Hugh Nutt for her wrist at her own expense on January 20, 2005, following an unrelated injury at work. Mr. Newell's payment history offered into the record establishes that the insurance carrier for the 2000 injury at issue in this claim last paid money benefits to Ms. Smith in 2001 when Ms. Smith missed work for surgery. The payout history indicates that the insurance carrier on this claim last paid for medical treatment that Ms. Smith received in 2002.

Because Ms. Smith's request filed on January 24, 2007, was filed more than one year after the last payment of compensation, I am constrained by law to find that Ms. Smith's present claim for additional benefits for her injury sustained on November 1, 2000, is barred by the applicable statute of limitation in Arkansas Code Annotated Section 11-

9-702(b). On that basis, I find that the claim for additional benefits must be denied and dismissed.

Because I find that the applicable statute of limitations bars this claim, I find the remaining issues and contentions raised by the parties in the Prehearing Order to be moot.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The employee/employer/carrier relationship existed on November 1, 2000.
2. On or about November 1, 2000, the claimant sustained a compensable right wrist injury (including but not limited to carpal tunnel syndrome).
3. The claimant filed a claim for benefits on April 18, 2001.
4. Administrative Law Judge J. Mark White filed an Order dismissing that claim on November 15, 2005, for failure to prosecute the claim.
5. Ms. Smith filed a new claim at the Commission on January 24, 2007.
6. Millcreek of Arkansas through American Home Assurance Company last provided compensation to

Ms. Smith for her November 1, 2000, injury in the form of medical treatment in 2002.

7. Because the claim filed on January 24, 2007, was filed more than two years from the date of injury and more than one year from the last payment of compensation, Ms. Smith's claim for additional medical benefits at issue herein is time-barred by the Statute of Limitations.

**ORDER**

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

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge