BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G009315

HOOVER PEARSON (Dec’d), EMPLOYEE CLAIMANT

INTERNATIONAL PAPER COMPANY, EMPLOYER RESPONDENT

OLD REPUBLIC INSURANCE COMPANY, INSURANCE COMPANY/SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., TPA RESPONDENT

OPINION FILED JANUARY 20, 2011


Claimant represented by Mr. Gary Davis, Attorney-at-Law, Little Rock, Arkansas.

Respondents represented by Ms. Mary Clift Hitt Abdalla, Attorney-at-Law, Jackson, Mississippi.

STATEMENT OF THE CASE

The above-styled claim has been submitted on a stipulated record. A prehearing conference was conducted in this claim on January 12, 2011, and a Prehearing Order was filed on said date. During the prehearing conference, the parties agreed that the issues to be presented for determination were:

1) Whether the decedent sustained a compensable injury arising out of and during the course of his employment with International Paper Company.

2) Whether this claim was barred by the applicable statute of limitations.

During the prehearing conference, both parties agreed that the issues, both compensability, as well as the affirmative defense, could be submitted on a stipulated record, specifically, a comprehensive set of stipulated facts. On
December 13, 2010, the claimant, Hoover Pearson (Dec’d), by and through his attorney, and respondents, International Paper Company, Old Republic Insurance Company and Sedgwick Claims Management Services, Inc., filed the following joint stipulations:

1) The claimant’s employment with the respondent/employer was during the approximate period of 1972 – 1976.

2) In a letter dated October 7, 2010, the claimant filed an AR-C with the Arkansas Workers’ Compensation Commission alleging “asbestos exposure culminating in diagnosis of lung cancer/asbestosis with the last injurious exposure 1976.”

3) It is undisputed that the first claim filing with regard to this “injury” was October 7, 2010.

4) Claimant did not work for respondent/employer at any time after 1976.

5) Claimant admits that any “injurious exposure” would have occurred before 1976.

6) The parties agree that the applicable statute of limitations is set out in Ark. Code Ann. §11-9-702(a)(2)(B) which states:

   (B) However, a claim for compensation for disability on account of silicosis or asbestosis must be filed with the Commission within one (1) year after the time of disablement, and the disablement must occur within three (3) years from the date of the last injurious exposure to the hazard of silicosis or asbestosis.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

2. This claim is barred by the applicable statute of limitations.

3. Because the claim is barred by time, all remaining issues are moot.

DISCUSSION

Compensation for occupational diseases in general are provided in Ark. Code Ann. §11-9-601 (Repl. 2002), portions of which are set out below:

(a) Where an employee suffers from an occupational disease as defined in this subchapter and is disabled or dies as a result of the disease and where the disease was due to the nature of the occupation or process in which he or she was employed within the period previous to his or her disablement as limited in subsection (g) of this section, then the employee, or, in case of death, his or her dependents, shall be entitled to compensation as if the disablement or death were caused by injury, except as otherwise provided in this subchapter.

(e)(1)(A) "Occupational disease", as used in this chapter, unless the context otherwise requires, means any disease that results in disability or death and arises out of and in the course of the occupation or employment of the employee or naturally follows or unavoidable results from an injury as that term is defined in this chapter.

(B) However, a causal connection between the occupation or employment and the occupational disease must be established by a preponderance of the evidence.

(g)(1) An employer shall not be liable for any compensation for an occupational disease unless:
(A) The disease is due to the nature of an employment in which the hazards of the disease actually exist and are characteristic thereof and peculiar to the trade, occupation, process, or employment and is actually incurred in his or her employment. This includes any disease due to or attributable to exposure to or contact with any radioactive material by an employee in the course of his or her employment;

(B) Disablement or death results within three (3) years in case of silicosis or asbestosis, or one (1) year in case of any other occupational disease, except a diseased condition caused by exposure to x-rays, radioactive substances, or ionizing radiation, after the last injurious exposure to the disease in the employment; or ....

(Emphasis supplied)

Compensation for asbestosis is provided in Ark. Code Ann. §11-9-602, portions of which state:

(a) As used in this subchapter, unless the context otherwise requires:

(1) “Asbestosis” means the characteristic fibrotic condition of the lungs caused by the inhalation of asbestos dust; and

(2) “Silicosis” means the characteristic fibrotic condition of the lungs caused by the inhalation of silica dust.

(b) In the absence of conclusive evidence in favor of the claim, disability or death from silicosis or asbestosis shall be presumed not to be due to the nature of any occupation within the provision of this subchapter unless during the ten (10) years immediately preceding the date of disablement the employee has been exposed to the inhalation of silica dust or asbestos dust over a period of not less than five (5) years, two (2) years of which shall have been in this state, under a contract of employment existing in this state. However, if the employee has been employed by the same employer during the whole of the five-year period, his or her right to compensation against the employer shall not be affected by the fact that he or she had been employed during any part of the period outside of this state. (Emphasis supplied)
(4) However, neither a claim for nor receipt of compensation or benefits under this subsection shall bar the employee from any right to compensation for actual disability from silicosis or asbestosis if the disability results not later and within the time limited in §11-9-601(g).

In addition, Ark. Code Ann. §11-9-603 (Repl. 2002) provides:

(a)(1) Except as otherwise provided in this subchapter, procedure with respect to notice of disability or death and as to the filing of claims and determination of claims shall be the same as in cases of accidental injury or death.

(2)(A) Written notice shall be given to the employer of an occupational disease by the employee, or someone in his or her behalf, within ninety (90) days after the first distinct manifestation thereof.

(B) In the case of death from an occupational disease, written notice of death shall also be given to the employer within ninety (90) days thereafter.

Finally, the time for filing claims for compensation including claims for disability on account of asbestosis is provided in Ark. Code Ann. §11-9-702 (Repl. 2002). The relevant portions state:

(a) TIME FOR FILING.

(1) A claim for compensation for disability on account of an injury, other than an occupational disease and occupational infection, shall be barred unless filed with the Workers' Compensation Commission within two (2) years from the date of the compensable injury. If during the two-year period following the filing of the claim the claimant receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter. For purposes of alleged injury, the claim shall be barred thereafter. For purposes of this section, the date of the compensable injury shall be defined as the date an injury is caused by an accident as set forth in §11-9-102(4).
(2)(A) A claim for compensation for disability on account of injury which is either an occupational disease or occupational infection shall be barred unless filed with the Commission within two (2) years from the date of the last injurious exposure to the hazards of the disease or infection.

(B) However, a claim for compensation for disability on account of silicosis or asbestosis must be filed with the Commission within one (1) year after the time of disablement, and the disablement must occur within three (3) years from the date of the last injurious exposure to the hazard of silicosis or asbestosis.

As reflected by the stipulations, the claimant was employed by the respondents during the approximate period of 1972 – 1976, which would, likewise, be the last date of any alleged injurious exposure. The immediate claim was filed on October 7, 2010. Accordingly, the claim is barred by applicable statute of limitations.

In view of the foregoing, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

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DAVID GREENBAUM
Chief Administrative Law Judge