

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E112173

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| ARLENE DIXON, EMPLOYEE                          | CLAIMANT   |
| BAXTER COUNTY REGIONAL HOSPITAL, EMPLOYER       | RESPONDENT |
| RISK MANAGEMENT RESOURCES,<br>INSURANCE CARRIER | RESPONDENT |

OPINION FILED AUGUST 5, 2003

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE FREDERICK S. "RICK" SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondent represented by HONORABLE WALTER A. MURRAY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

## OPINION AND ORDER

The respondent appeals from a decision of the Administrative Law Judge filed August 29, 2002.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant suffered compensable injuries to her lumbar spine on February 5, 1991, and July 21, 1991; benefits based upon a 10% anatomical impairment rating have been paid; the claimant's average weekly wage was \$202.38; and the

claimant's request for modification of the award and request for additional benefits was filed October 27, 1997.

3. In its February 14, 2001, opinion, the Commission found that the claimant's request to modify the previous award is not barred by the statute of limitations; that the claimant had proved entitlement to additional reasonable and necessary medical treatment; that the treatment by Dr. Park and Dr. McBride was reasonable, necessary, and related to the claimant's injuries; and that the respondents were liable for the expenses of such treatment.

4. Consistent with the findings of the Commission that the claimant's continuing need for medical treatment was natural and probable result of her original compensable injuries, and consistent with its reversal of the administrative law judge finding that the claimant's continuing pathology was related to degenerative conditions, rather than her compensable back strains, the preponderance of the evidence shows that the claimant has suffered permanent total disability, including anatomical impairment in the total amount of 13% to the body as a whole, as assigned by Dr. McBride.

5. The respondents have controverted the payment of benefits hereinafter awarded and the claimant's attorney is entitled to the maximum statutory attorney's fee thereon, payable one-half by the claimant and one-half by the respondents.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies

the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

The respondent is directed to comply with the award set forth in the opinion of the Administrative Law Judge. All accrued benefits shall be paid in lump sum without discount and with interest thereon at the lawful rate from the date of the opinion of the Administrative Law Judge. Additionally, for prevailing on this appeal before the Full Commission, the claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$250.00.

IT IS SO ORDERED.

SHELBY W. TURNER, Commissioner

Chairman Reeves concurs.

CONCURRING OPINION

\_\_\_\_\_I concur in the principal opinion's findings. I write separately to address the statute of limitations

argument raised by the respondents on appeal.

The respondents argue this Commission erred in its opinion of February 14, 2001 by not holding this claim to be barred by the statute of limitations. In that opinion, the Commission held this claim to be governed by the one-year limitation established in Ark. Code Ann. § 11-9-702(b)(1) for claims for additional benefits. Claimant filed the instant claim 11 months after the Commission's November 18, 1996 ruling on her case, keeping her within this one-year time limit.

Respondents maintain this claim is instead subject to the six-month statute of limitations imposed by Ark. Code Ann. § 11-9-713 on claims for modification of an award. Respondents rightly point out that the claimant characterized the instant claim as one for modification of an award. However, contrary to the respondents' assertion, the Commission has not confused these two statutes. Rather, the Commission has followed precedent in remedying an apparent conflict between two competing statute of limitations.

The Arkansas Supreme Court has addressed this statutory conflict once before, holding:

In this situation we are committed to the rule that if a substantial doubt exists as to which is the applicable statute of limitations, the longer rather than the short period of limitation is to be preferred and adopted. *Jefferson v. Nero*, 225 Ark.

302, 280 S.W.2d 884. This rule is in harmony with our settled policy of giving a broad and liberal construction to the provisions of the Compensation Act to effectuate its purposes and the further policy of resolving doubtful cases in favor of the claimant.

Reynolds Metal Company v. Brumley, 226 Ark. 388, 392, 290 S.W.2d 211 (1956).

More to the point, the Arkansas Court of Appeals has indicated that when a claimant seeks additional benefits subsequent to a final award, while § 11-9-713 provides the criteria to judge the claimant's entitlement to benefits, it is § 11-9-702(b) (1) that governs the statute of limitations. Southern Wooden Box Co. v. Smith, 5 Ark. App. 14, 631 S.W.2d 620 (1982). To put it another way, the one-year limit of § 11-9-702(b) (1) trumps the six-month limit of § 11-9-713.

Because of the precedent established by the Supreme Court and the Court of Appeals, I am not persuaded by the respondents' legal arguments, and I must affirm the Administrative Law Judge's finding that this claim is not barred by the statute of limitations.

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OLAN W. REEVES, Chairman

Commissioner Yates dissents.