

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E814356

FREDERICK WILLIAMS, EMPLOYEE	CLAIMANT
HEALTHCARE SERVICES GROUP, EMPLOYER	RESPONDENT
ZURICH INSURANCE COMPANY, CARRIER	RESPONDENT

ORDER FILED NOVEMBER 19, 2003

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

Claimant represented *pro se*.

Respondent represented by HON. LEE J. MULDROW, Attorney at Law, Little Rock, Arkansas.

ORDER

This case is before the Commission on the claimant's motion to submit additional evidence and on appeal from a decision by the Administrative Law Judge finding that the he has no authority to make a finding on compensability because the Commission's prior decision is law of the case. Based upon our de novo review of the record, we find that the claimant's claim for benefits has already been litigated and the Commission's opinion dated June 30, 2000, is law of the case. Further, any appeal from the 2000 decision was filed untimely.

This case has a varied history before the Commission. Initially, the claimant filed a claim contending that he sustained a compensable injury on

November 11, 1998. A hearing was held on August 16, 1999, wherein the claimant presented *pro se*. In an opinion filed September 22, 1999, the Administrative Law Judge found that the claimant failed to prove by a preponderance of the evidence that he sustained a compensable injury. The claimant filed a timely appeal with the Full Commission. In an order dated March 17, 2000, the Commission remanded the case to the Administrative Law Judge for additional findings. The respondent also filed a motion to exclude evidence. The Commission stated in its March 17, 2000, order as follows:

Although the administrative law judge indicated in his decision that the documentary evidence in this case fails to reveal any medical evidence supported by objective findings, we note that the record appears to contain two different medical documents dated December 17, 1998, which appear to refer to "back spasm", a subsequent January 19, 1999, report, which then seems to indicate a lack of "spasm", and a July 15, 1999, pain clinic notation of trigger points and muscle spasms. We remand this case to the administrative law judge for a full examination of the relevant evidence presented in this case.

Meister v. Safety Kleen, ___ Ark. ___,
___ S.W.2d. ___ (November 4, 1999).

In a revised and substituted opinion entered on March 31, 2000, the Administrative Law Judge found that the

claimant proved by a preponderance of the evidence that he sustained a compensable injury but found that the claimant was not entitled to any temporary total disability benefits and only limited medical treatment. The claimant appealed this decision to the Full Commission. In an opinion dated June 30, 2000, the Commission affirmed and adopted the March 31, 2000, opinion of the Administrative Law Judge. However, in the findings of fact the opinion enumerated the findings from the September 22, 1999, Administrative Law Judge opinion. The claimant did not file an appeal within the thirty day time frame nor did he ask the Commission to correct its order.

On August 14, 2001, the claimant filed a notice of appeal. The matter was assigned to an Administrative Law Judge. On March 27, 2002, a prehearing conference was held. The claimant maintained that he had filed a timely appeal and the respondents contended that the appeal was untimely. Dorothy Jackson, the Clerk of the Commission, was instructed to review the Commission's file to make a determination as to whether or not an appeal from the June 30, 2000, decision of the Commission was filed. In a letter dated April 16, 2002, Ms. Jackson stated that there was no record of any appeal.

The claimant then filed another appeal and on December 27, 2002, the Administrative Law Judge (which we note was a different judge) entered an opinion finding that the Commission had denied compensability in an opinion dated June 30, 2000, and that no appeal was taken from that decision. The claimant's appeal from that decision is presently before the Full Commission. The claimant also attached copies of medical records and asked that these records be admitted into the record.

After reviewing the record in this case, we find that the claimant did not file a timely appeal of the June 30, 2000, decision of the Commission. The Return Receipt from the United States Post Office indicates that the claimant received that decision on July 5, 2000. The claimant had thirty (30) days from that date to file an appeal with the Commission. The claimant failed to do so. He did not file anything with the Commission until August 14, 2001, over one year after he received the decision from the Commission. Ark. Code Ann. §11-9-711 provides:

(b) AWARD OR ORDER OF COMMISSION - APPEAL. (1) A compensation order or award of the commission shall become final unless a party to the dispute shall, within thirty (30) days from receipt by him of the order or award, file notice of appeal to the Arkansas Court of Appeals, which is designated as

the forum for judicial review of those orders and awards.

(A) The appeal to the court may be taken by filing in the office of the commission, within thirty (30) days from the date of the receipt of the order or award of the commission, a notice of appeal, whereupon the commission under its certificate shall send to the court all pertinent documents and papers, together with a transcript of evidence and the findings and orders, which shall become the record of the cause.

The claimant could have requested the Commission to reconsider its decision within thirty (30) days as well. However, the claimant failed to file anything with the Commission for over one year.

Therefore, when we consider all of the evidence contained in the record, we find that the claimant failed to file a timely appeal after the June 30, 2000, Full Commission decision. The claimant's motion to submit additional evidence is therefore rendered moot. Accordingly, this claim is hereby denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Turner dissents.