

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F109913 & F109912

HERMAN E. BURGESS, EMPLOYEE	CLAIMANT
UNIMIN CORPORATION, EMPLOYER	RESPONDENT NO. 1
AIG INSURANCE (NATIONAL INSURANCE), INSURANCE CARRIER	RESPONDENT NO. 1
ZURICH AMERICAN INS. CO., INSURANCE CARRIER	RESPONDENT NO. 2

OPINION FILED MARCH 15, 2005

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

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

Respondents No. 1 represented by HONORABLE FRANK NEWELL,
Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE LEE MULDROW,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The claimant appeals from a decision of the
Administrative Law Judge filed July 2, 2004. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

1. Prior to July 18, 1988, claimant was an employee of Silica Products. Unimin purchased the assets of Silica Products on July 18, 1988, and the claimant became an employee of Unimin on that date.
2. The respondent National Union went on the risk on August 1, 1988.
3. The respondent National Union went off the risk on July 31, 1994.
4. Zurich American Insurance came on the risk on August 1, 1994, and remained on the risk until claimant terminated his employment on September 30, 1996.
5. The claimant last worked at Unimin on September 30, 1996.
6. When the claimant last worked for Unimin in 1996, his salary was approximately \$27,000 per year. The claimant's wages would entitle him to the maximum compensation rates in effect in 1996.
7. No benefits have been paid on the silicosis claim. This matter is fully controverted by all respondents.
8. The claimant has proven by a preponderance of the evidence that he developed silicosis arising out of his employment with Silica Products and Unimin Corporation. The claimant's silicosis condition is also established by objective medical findings.
9. The respondent employer Unimin Corporation, and the respondent carrier Zurich-American Insurance Company, were the employer and carrier at the time the claimant experienced his last injurious exposure to the hazards of silicosis in his employment on September 30, 1996.

10. The claimant's failure to give written notice prior to August 30, 2001 is excused under the circumstances presented in this case.
11. Because the claimant's disablement occurred more than 3 years from the date of his last injurious exposure to the hazards of silicosis from his employment, I find that the present claim is barred by the application Statute of Limitations in Ark. Code Ann. § 11-9-702(a)(2)(A).
12. I find that the claimant has abandoned his constitutional challenge to Ark. Code Ann. § 11-9-601(g), and I point out that a prior constitutional challenge was considered and rejected by the Arkansas Court of Appeals in Hamilton v. Jeffrey Stone Co., 25 Ark. App. 66, 752 S.W.2d 288, review denied, 297 Ark. 24, 759 S.W.2d 792 (1998).

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.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.