

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E907010

GLENN E. ESKOLA,
EMPLOYEE

CLAIMANT

LITTLE ROCK PUBLIC SCHOOLS,
EMPLOYER

RESPONDENT

MUNICIPAL LEAGUE WCT,
INSURANCE CARRIER

RESPONDENT

OPINION FILED MARCH 2, 2005

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

Claimant represented by the HONORABLE GARY DAVIS, Attorney
at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE J. CHRIS BRADLEY,
Attorney at Law, Little Rock, Arkansas.

Decision of administrative law judge: Affirmed.

OPINION AND ORDER

The claimant appeals an administrative law judge's
order and opinion filed February 2, 2004. The
administrative law judge found that the statute of
limitations barred the claimant's claim for additional
benefits. After reviewing the entire record *de novo*, the
Full Commission affirms the opinion of the administrative
law judge.

I. HISTORY

The parties stipulated that the claimant sustained a compensable injury on September 15, 1998. The claimant credibly testified that he injured his right shoulder. The claimant subsequently began treating with Dr. Richard A. Nix. The claimant signed a Form AR-C, Claim For Compensation, on June 17, 1999. On the Claim Information section of the Form AR-C, the claimant indicated that his claim was for **initial** benefits of "Medical Expenses" and "Other," i.e., "any needed to solve my health concerns." The claimant also indicated that his claim was for **additional** benefits of "Additional Medical Expenses" and "Other," i.e., "any needed to solve my health concerns." The claimant agreed on cross-examination that he received no worker's compensation benefits before filing the Form AR-C on June 17, 1999.

The claimant testified, "I filled out all the forms. And they directed me to Dr. Kilgore." The claimant began treating with Dr. Reed W. Kilgore in July 1999. The claimant agreed that the respondent-carrier began paying his medical treatment after the claimant filed the Form AR-C. Dr. Kilgore noted on May 8, 2000:

Mr. Eskola did pretty well with previous injection. He continues to have some degree of pain. He understands that he might require AC

resection arthroplasty for complete and permanent relief of his symptoms. In the meantime he can continue to treat conservatively with anti-inflammatory and modification of activities. If he has worsening then he will require arthroscopy and AC distal clavicle resection, which he can schedule if he wishes....

The claimant testified:

Q. Were you able to follow through with that surgical recommendation at that time?

A. No, sir.

Q. You weren't able to because?

A. Because of the time constraints.

Q. And tell us about those time constraints.

A. Since I retired, - I retired at the end of '99. I have done volunteer work. Part of that is my football coaching and helping my family do some construction work in building their homes. So my time has just been not what I thought it would be when I retired. Let me put it that way. It's been very, very full. And my nephew - We finally got his house built in April. And I had a three months' window between football in August, and I said, "Hey, I've got to have it done. I finally have the time." And that's when I called again to check and see what we had to do.

A claims examiner with the respondent-carrier wrote to the claimant on May 13, 2003:

I have completed my investigation into your claim for workers' compensation benefits. Based upon the findings of my investigation your claim for benefits has been respectfully denied. The statute (sic) of limitation has run on this claim. The law states that in order to file a claim for additional benefits you have to file two years

after the date of injury or one year from the date of the last payment of compensation which ever is greater.

If you don't agree with this decision, you may request a hearing with the Workers' Compensation Commission.

The record indicates that the claimant resumed treating with Dr. Nix on May 27, 2003. On June 13, 2003, Dr. John Yocum performed an "Arthroscopy of the right shoulder with arthroscopic repair of SLAP lesion and arthroscopic Bankart repair with debridement of labral tear." The claimant testified that surgery helped him. "I can do a lot of things that I couldn't before, and basically I'm great. I'm a whole lot better." Dr. Nix returned the claimant to full activity on September 16, 2003.

A pre-hearing conference was held on December 2, 2003. The claimant contended that he was entitled to additional medical treatment for his neck and shoulder injury. The respondents contended that the statute of limitations, Ark. Code Ann. §11-9-702, barred the claim. The respondents contended that "the last payment for medical treatment was for services rendered on May 8, 2000." The respondents contended that the claimant "did not make a report of an injury until June 17, 1999, at which time he completed a

Commission Form AR-C and sought initial and additional benefits."

The parties agreed to litigate the following issues:

- (1) Whether the statute of limitations bars the claim for additional benefits.
- (2) Entitlement to additional medical benefits for the shoulder and neck injury.

After a hearing before the Commission, the administrative law judge found in pertinent part, "3. The preponderance of the evidence provides that the claim for additional medical benefits is barred by the statute of limitations. 4. The claim for additional benefits is respectfully denied and dismissed." The claimant appeals to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-702 provides:

(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.

(B) 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)....

(4) If, within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a) (1)-(3) of this section.

(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....

(c) A claim for additional compensation must specifically state that it is a claim for additional compensation. Documents which do not specifically request additional benefits shall not be considered a claim for additional compensation....

(h) (1) The purpose of this section is to provide for a timely hearing on claims for benefits.

In the present matter, the claimant argues that the Form AR-C filed on June 17, 1999 acted to toll the statute of limitations. The claimant notes that the respondents did not request dismissal of the claim within six months after filing of the claim, pursuant to Ark. Code Ann. §11-9-702(a) (4). The respondents correctly point out that they began paying for the claimant's medical treatment after the claimant's June 17, 1999 Form AR-C filing. As we understand their brief, the respondents contend that the claimant should have filed a claim for "additional" benefits within

one year after the last medical treatment of May 8, 2000. The respondents state, "Not until May 2003 did claimant seek benefits additional to those previously received when he called the respondent seeking pre-approval for surgery."

The Full Commission affirms the administrative law judge's finding that the statute of limitations bars the claim for additional benefits. The parties stipulated that the claimant sustained a compensable injury on September 15, 1998. The claimant did not receive worker's compensation until after his timely-filed claim for initial benefits on June 17, 1999. The last uncontroverted treatment provided by the respondents was the claimant's visit with Dr. Kilgore on May 8, 2000. Respondents' Exhibit One indicates that a check was dated July 26, 2000 for the date of service of May 8, 2000. However, the claimant is "compensated" by the furnishing of medical services, not payment for those services. Heflin v. Pepsi Cola Bottling Co., 244 Ark. 195, 424 S.W.2d 365 (1968).

As we noted *supra*, Ark. Code Ann. §11-9-702(b) provides:

(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....

Two years from the compensable injury in the present matter would be September 15, 2000, and one year from the last payment of compensation, the "greater" period in this case, would be May 8, 2001. The claimant states in his brief that he requested a hearing on September 11, 2003. This request for a hearing was clearly a claim for additional compensation, and the record therefore demonstrates that the statute of limitations had expired with regard to the claimant's claim for additional compensation.

The Full Commission notes our *dicta* statement in Spencer v. Stone Container Corp., Workers' Compensation Commission E121478 (Feb. 24, 2000): "A claim for initial benefits does not toll the running of the statute of limitations in workers' compensation cases." The Commission cited Petit Jean Air Service v. Wilson, 251 Ark. 871, 475 S.W.2d 531 (1972), a case dealing with claims for additional compensation. The Supreme Court in Wilson held that carriers should know when their liability in a particular claim has terminated, stating, "It is plainly the better

rule to put upon the claimant the burden of filing his claim for additional compensation within the time allowed by the statute. In our opinion, that view of the matter gives effect both to the letter and to the spirit of the law."

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge's finding that the claim for additional medical benefits is barred by the statute of limitations. The respondents stopped paying medical treatment on May 8, 2000. The claimant did not request additional compensation until September 2003, well past the May 8, 2001 statutory time to claim additional compensation. This claim is denied and dismissed.

_____IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.