

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F413014

ROSIE LATTIMORE,
EMPLOYEE

CLAIMANT

WAL-MART ASSOCIATES, INC.,
EMPLOYER

RESPONDENT

CLAIMS MANAGEMENT, INC.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 21, 2008

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

Claimant appears Pro Se.

Respondents represented by the HONORABLE SUSAN M.
FOWLER, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed November 7, 2007. In
said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The Workers' Compensation Commission has jurisdiction of this case in which the relationship of employer-employee-carrier existed among the parties on November 30, 2004.
2. The claimant's hearing request, filed January 31, 2007 for a November 30, 2004 injury, exceeds the two year deadline under Ark. Code Ann. §11-9-702 and therefore this claim is barred by the statute of limitations.

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.

Therefore we affirm and adopt the November 7, 2007 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 Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's finding that this claim is barred by the statute of limitations. I find that the respondents are

estopped from asserting the statute of limitations for two reasons.

The claimant sustained an injury to her right knee on November 30, 2004. On December 14 or December 15, 2004, she filled out an accident report with the employer and on December 15, 2004, she received a letter from the case manager with Claims Management, Inc., Hanna Wiley, denying her claim. In that letter, Ms. Wiley said:

I realize that you may have questions regarding our reasons for denying your claim. Therefore, if you wish to discuss this matter, please do not hesitate to contact me...

On the same day, Ms. Wiley sent the "Employee's Notice of Injury" and the "Employer's Intent to Accept or Controvert Claim" to the Workers' Compensation Commission, indicating that the claim was controverted.

In October 2006, the claimant consulted an attorney who told her she needed to file a claim form. The claimant contacted Ms. Wiley, as she was invited to do in the initial letter she received from her on December 15, 2004. The claimant told Ms. Wiley that she understood that she needed to file a claim form. Ms.

Wiley told the claimant that it was not necessary to file a claim form. The claimant was told by Ms. Wiley to request a hearing, instead. On January 31, 2007, the claimant sent a hearing request to the Commission. The two-year period allowed for the filing of a claim for compensation expired in December of 2006.

The claimant testified that she never saw any notices posted on the employer's premises designed to inform employees of the procedures for the filing of workers' compensation claims.

The claimant testified that she had a previous workers' compensation claim with another employer which was paid without difficulty. In that case, the claimant testified that "workers' comp filed and everything on my behalf, so I didn't have to do anything".

In Snow v. Alcoa, 15 Ark. App. 205, 691 S.W.2d 194 (1985), the Arkansas Court of Appeals considered a case where an employer had given an employee erroneous information indicating that the employee could not receive workers' compensation benefits after retirement from the company. By the time the employee learned that this information was incorrect and filed a claim for additional benefits, the statute of limitations had run on the claim. The Court found that the employer was

estopped from asserting the statute of limitations as a defense to the payment of benefits, stating:

Estoppel is an equitable doctrine which is invoked in appropriate circumstances to prevent a party from prevailing on purely technical grounds after having acted in a manner indicating that the opposing party's strict compliance with the technicality would not be required. In Foote's Dixie Dandy v. McHenry, Adm., 270 Ark. 816, 607 S.W.2d 323 (1980), the Arkansas Supreme Court stated the necessary elements of estoppel. The Court said:

(1) the party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel had a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury.

In this case, the case manager led the claimant to believe that the claimant's strict compliance with the technical requirements of the statute of limitations would not be required, i.e., the filing of a claim. It was the claimant's intention to file a claim in October 2006 and she was told that this was not required. The case manager knew the facts and had every reason to believe that the claimant would take

her advice. The claimant did not know the technical requirements of the law and had successfully obtained workers' compensation benefits in a previous claim which required only communication with her employer and not a formal claim filing. In that claim, the respondent filed everything on her behalf. And finally, it is obvious that the claimant relied on the information given to her by the case manager, to her detriment, when she did not file a claim in October 2006. If she had filed a claim at this time, her case would not have been dismissed. In short, the claimant established all of the elements necessary to invoke the doctrine of estoppel and the respondents should be prohibited from asserting the statute of limitations based on these principals.

The respondents should be estopped from asserting the statute of limitations for a second reason. The claimant testified that she never saw any notices posted at her place of employment showing employees how to file workers' compensation claims. Such notices are required to be posted by Ark. Code Ann. §11-9-407. The respondents offered no evidence that the notices were posted. In accordance with Rider v. Julian Martin, Inc., 31 Ark. App. 144, 789 S.W.2d 743 (1990),

it was incumbent on the employer to offer evidence to show that the required notice had been posted, and in the absence of such evidence, the employer will be estopped from asserting the statute of limitations. Because the claimant said that she was unaware of the existence of the required notice and the employer did not produce evidence that the notices were posted, the respondent is estopped from asserting the statute of limitations in this case.

For the two reasons stated above, I find that the respondents are estopped from asserting the statute of limitations as a bar to this claim. Therefore, I must respectfully dissent from the majority opinion.

PHILIP A. HOOD, Commissioner