

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F311773

ROGER REVELLE,  
EMPLOYEE

CLAIMANT

TOMMY HOSKYN D/B/A AN TOM FARMS,  
UNINSURED EMPLOYER

RESPONDENT

OPINION FILED JUNE 27, 2008

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

Claimant appears Pro Se.

Respondents represented by the HONORABLE MICHAEL J.  
DENNIS, Attorney at Law, Pine Bluff, Arkansas.

Decision of Administrative Law Judge: Affirmed and  
Adopted.

## OPINION AND ORDER

Claimant appeals an opinion and order of the  
Administrative Law Judge filed September 18, 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 claim in which the relationship of employer-employee-carrier existed among the parties during April 1995 and May 2001.
2. The claimant did not file a claim for benefits until October 2003 for a 1995 injury. His claim for a 2001 injury was not made known until the May 2007 prehearing conference. These claims are barred by the statute of limitations.
3. Respondent's land leveling business is not entitled to an agricultural exemption.

4. Respondents are directed to pay court reporter, Kay Jones' fees and expenses within thirty (30) days pursuant to Commission Rule 20.

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 September 18, 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.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs & dissents.

CONCURRING & DISSENTING OPINION

I must respectfully concur in part and dissent in part from the majority's opinion. Specifically, I

agree that an employer/employee relationship existed between the claimant and the respondent during April 1995 and May 2001. I also agree that the respondent's land leveling business is not entitled to an agricultural exemption. However, I respectfully dissent from the majority's finding that the statute of limitations bars this claim. Based upon a de novo review of the record in its entirety, I find that the claimant has shown by a preponderance of the evidence that the respondent should be estopped from asserting the statute of limitations defense. I find that the evidence of record shows that had the respondent properly covered the claimant's 1995 injury under workers' compensation, rather than falsely asserting an agricultural exemption, not only in 1995 but all the way through the hearing in 2007, the instant claims would not be barred.

The claimant worked for the respondent, Mr. Tommy Hoskyn, as a laborer. The claimant's job duties required him to level land for golf courses, rice fields, roads, etc, using a tractor with dirt pans. In 1995, the claimant fell head first, 10-11 feet from a tractor. X-rays of the claimant's head, neck and chest taken at the Stuttgart Emergency Room revealed three fractured ribs. The claimant was off work 3-4 days and

the claimant's medical bills were paid by Mr. Hoskyn's Farm Bureau liability coverage. The claimant's condition worsened, and he saw general practitioner Dr. Gustavus for diagnostic testing. Mr. Hoskyn did not accept liability for anymore medical bills, stating that he need proof that the claimant's condition was caused by the 1995 fall. The claimant could not afford medical treatment and did not pursue the matter. The claimant continued working and in 2001 he injured his back when the tractor he was driving hit a ditch covered by grass, jarring his back.

The claimant notified his employer of the accident and went to UAMS in Little Rock where an MRI was performed. The claimant came under the care of a Dr. Krisht who performed surgery on August 28, 2001. The claimant stated that it wasn't until September 12, 2002 that he received a medical report relating his back problem to his work-related injuries. The claimant testified that he told Mr. Hoskyn that his injury was work related and that Mr. Hoskyn told him he would turn in the information to Farm Bureau. The claimant filed an AR-C form, received by the AWCC on October 27, 2003 listing back, rib and knee injuries on April 9, 1995 from falling from the tractor. The claimant contacted a

private attorney and filled out another AR-C form listing the 1995 injuries AND a back injury on May 15, 2001, however, the AR-C form was never filed with the AWCC. Mr. Hoskyn testified that he does not recall the claimant reporting the 2001 incident.

For the claimant to prevail on an "estoppel" theory, the claimant must prove four elements:

(1) the party to be estopped must know the facts; (2) the party to be estopped must intend that his or her conduct be acted on or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the latter must be ignorant of the true facts; and (4) must rely on the former's conduct to his or her injury. Miller County v. Opportunities, Inc., 334 Ark. 88, 96, 971 S.W.2d 781, 786 (1998).

Here, the claimant did not know that his 1995 injury should have been covered under workers' compensation. The respondent, however, by informing the claimant that the respondent would not pay anything else unless the claimant showed the respondent how it was work related, obviously understood that the claimant could and should file a workers' compensation claim. The claimant relied on the respondent's partial payment of his medical bills and the respondent's duplicitous and contradictory assertion of the agricultural exemption,

and, to the claimant's detriment, did not file a timely claim for workers' compensation benefits. Therefore, I find that the respondent must be estopped from raising the statute of limitations defense.

In conclusion, I find that an employer/employee relationship existed between the claimant and the respondent during April 1995 and May 2001. I find that the respondent's land leveling business is not entitled to an agricultural exemption. I also find that the claimant has shown by a preponderance of the evidence that the respondent should be estopped from asserting the statute of limitations defense.

For the aforementioned reasons, I must respectfully concur & dissent.

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PHILIP A. HOOD, Commissioner