

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. D111326, E304462 & E610079

BETTY STRICKLAND,  
EMPLOYEE

CLAIMANT

HELENA CHEMICAL COMPANY,  
EMPLOYER

RESPONDENT

INSURANCE COMPANY OF NORTH AMERICA/  
RELIANCE NATIONAL INDEMNITY COMPANY  
C/O BROADSPIRE,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED SEPTEMBER 25, 2008

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

Claimant appears PRO SE.

Respondent represented by the HONORABLE NEAL HART, Attorney  
at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part,  
reversed in part.

OPINION AND ORDER

The claimant, *pro se*, appeals an administrative law  
judge's amended opinion filed May 21, 2008. The  
administrative law judge found, among other things, that  
prior administrative law judge and Commission opinions were  
law of the case and *res judicata*. After reviewing the

entire record *de novo*, the Full Commission affirms the administrative law judge's opinion.

I. HISTORY

The record indicates that Betty Jean Strickland, now age 50, began working at Helena Chemical Company in February 1977. The record indicates that the claimant reported pain in her lower back after an alleged accident at Helena Chemical Company in September 1981. The parties have stipulated the "no benefits were paid in the 1981 claim (D111326) subsequent to the date it was closed in the Fall of 1981."

The parties stipulated that the claimant sustained a compensable injury on January 20, 1993 (E304462). The claimant reported "Pain from neck down to right leg."

The record indicates that the claimant did not work for the respondent-employer beginning January 21, 1993. An administrative law judge filed an opinion on March 7, 1994 (E304462). The ALJ found, among other things, that the claimant was not entitled to temporary total disability benefits after August 16, 1993. The Full Commission affirmed and adopted the ALJ's decision in an opinion filed November 28, 1994.

The record indicates that the claimant was not employed with the respondent-employer after February 20, 1995. In November 1995, an allergist-immunologist reported that the claimant had become ill "from a chemical exposure on her job at the Chemical Plant at which she works." The claimant was assessed as having "Multiple Chemical Sensitivity Syndrome" in May 1996.

An administrative law judge filed an opinion on March 21, 1997 (E304462). The ALJ found, "2. The evidence demonstrates that claimant's claim for additional benefits related to her compensable back injury of January 10, 1993, is barred by the Statute of Limitations."

An administrative law judge filed an opinion on June 27, 1997 (E610079). The ALJ found, "2. Claimant has failed to demonstrate, by clear and convincing evidence, that her current allergic condition is causally related to exposure to various chemicals during the course of her employment." The Full Commission affirmed and adopted the administrative law judge's decision in an opinion filed December 11, 1997. The Arkansas Court of Appeals affirmed the Commission in an unpublished opinion delivered December 2, 1998.

An administrative law judge filed an opinion on November 21, 2000 (F002358 & E610079). The ALJ found, in pertinent part:

2. The Claim Number F002358 was filed on March 8, 2000, and the Claim Number E610079 was filed August 3, 1996.
3. The preponderance of the evidence does reflect that the claim for workers' compensation benefits is barred by the statute of limitations. (A.C.A. §11-9-702).
4. The preponderance of the evidence does reflect that the claim for workers' compensation benefits is barred by the doctrine of *res judicata*.

The administrative law judge also denied a motion for sanctions against the claimant.

A pre-hearing order was filed on October 2, 2007. The claimant contended that "she sustained compensable injuries on September 24, 1981 (D111326), January 20, 1993 (E304462) and on May 17, 1996 (E610079), was diagnosed with multiple chemical sensitivity syndrome and is entitled to appropriate benefits. The claimant contends that all of the Administrative Law Judge opinions (E304462 - March 7, 1994 and March 21, 1997; E610079 - June 27, 1997 and November 21, 2000) should be reversed and benefits awarded to the claimant. The claimant contends that the hearing should be held in Houston, Texas, and requests a change of venue."

The respondents contended that the claims were not compensable. The respondents contended that the claims were barred by the applicable statute of limitations and were barred by the doctrine of *res judicata*. The respondents contended that they had filed a Motion to Dismiss, and the respondents requested that sanctions and costs be imposed on the claimant.

The parties agreed to litigate the following issues:  
"1. Compensability of claimant's claims and related benefits. 2. Sanctions and costs."

An administrative law judge filed an opinion on May 13, 2008 and an amended opinion on May 21, 2008. The ALJ found, among other things, that the claimant's claims were barred by the statute of limitations and the doctrine of *res judicata*. The ALJ found that the respondents were "entitled to an award of their costs of defending the instant proceeding." The claimant appeals to the Full Commission.

## II. ADJUDICATION

### A. Filing of claims

Ark. Stat. Ann. 81-1318(Repl. 1976) provides:

(b) In cases where compensation for disability 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. The time limitations of this subsection shall not apply to claims for replacement of medicine, crutches, artificial limbs and other apparatus permanently or indefinitely required as the result of a compensable injury, where the employer or carrier previously furnished such medical supplies.

Ark. Code Ann. §11-9-702 (Repl. 1987) provides:

(b) In cases where compensation for disability 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....

B. Res judicata

*Res judicata* applies when there has been a final adjudication on the merits of the issue by a court of competent jurisdiction on all matters litigated and those matters necessarily within the issue which might have been litigated. *Beliew v. Stuttgart Rice Mill*, 64 Ark. App. 334, 987 S.W.2d 281 (1998); *Perry v. Leisure Lodges*, 19 Ark. App. 143, 718 S.W.2d 114 (1986). The doctrine of *res judicata* is applicable to decisions of the Commission. *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996). The key question regarding the application of *res judicata* is whether the party against whom the earlier decision is being

asserted had a full and fair opportunity to litigate the issue in question. *Cater v. Cater*, 311 Ark. 627, 846 S.W.2d 173 (1993).

In the present matter, an administrative law judge essentially found that the claimant's claim was barred by the statute of limitations and *res judicata*. The Full Commission affirms this finding. The claimant did not claim entitlement to additional benefits, pursuant to her 1981 claim, before expiration of the time for filing in accordance with Ark. Stat. Ann. 81-1318 (Repl. 1976). An administrative law judge found that the statute of limitations barred a claim for additional benefits related to the January 1993 injury. In June 1997, an administrative law judge found that the claimant did not prove her allergic condition was compensable. The Full Commission and Court of Appeals affirmed the administrative law judge's finding. In November 2000, an administrative law judge found that the claimant's claim for additional benefits was barred by the statute of limitations and the doctrine of *res judicata*. The claimant did not appeal the administrative law judge's November 2000 finding.

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge's finding that the statute of limitations and the doctrine of *res judicata* are bars to the claimant's current claim for additional benefits. We therefore affirm the administrative law judge's findings in this regard. The Full Commission does not affirm the administrative law judge's finding that the claimant instituted her claim without reasonable grounds pursuant to Ark. Code Ann. §11-9-714(Repl. 2002). Nor do we affirm the administrative law judge's assessment of costs against the claimant. This claim is otherwise denied and dismissed.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

Commissioner McKinney concurs in part, dissents in part.

CONCURRING AND DISSENTING OPINION

I concur with the majority findings that the claimant's claims are barred by the statute of limitations and the doctrine of *res judicata*. However, I must respectfully dissent from the majority finding

that costs should not be assessed against the claimant at this time. Arkansas Code Annotated § 11-9-714 states:

If the court having jurisdiction of proceedings in respect to any claim or compensation order determines that the proceedings in respect to the claim or order have been instituted or continued without reasonable grounds, the cost of the proceedings shall be assessed against the party who has instituted or continued the proceedings.

This statutory provision is not optional. If the court having jurisdiction finds that the claim has been instituted without reasonable grounds, costs shall be assessed. It is overwhelmingly clear that the claimant instituted these claims without reasonable grounds. With the exception of the 1981 claim for which benefits were paid and no claim for additional benefits was filed until 2007, all other claims the claimant brought before the Administrative Law Judge and now before the Full Commission on appeal have been previously litigated. The claimant did not prevail the first time she tried these claims. As noted by the Administrative Law Judge, the claimant acknowledged that she is bringing these claims once again before the Commission because she disagreed with there previous outcome. Failure

to accept defeat is not reasonable grounds to bring these claims before the Commission. Accordingly, I find that pursuant to A.C.A. § 11-9-714 we are constrained to impose costs against this claimant.

KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs.

CONCURRING OPINION

Although joining the majority in its determination that AWCC Claim Nos. E304462, E610079 and F002358 are barred by the doctrine of *res judicata*, and that AWCC Claim No. D111326 is barred by the statute of limitations, in light of the dissenting commissioner's assertion that Arkansas Code Annotated §11-9-714 is not optional and that the majority is therefore constrained to impose costs against this claimant, I am compelled to write separately to clarify the majority opinion. All of the above-referenced claims were litigated together. As noted in the dissenting opinion, one of the instant claims, AWCC Claim No. D111326, has never been previously litigated. Regardless of the respondent's affirmative defense of statute of limitations, the *pro se* claimant had the right to a hearing on this claim in front

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of an Administrative Law Judge and it cannot be said that  
her actions were "without reasonable grounds."

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PHILIP A. HOOD, Commissioner