

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F711891

OMAR NAVARRETE, EMPLOYEE	CLAIMANT
UNIVERSITY OF ARKANSAS, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS, CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 10, 2010

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

Claimant represented by the HONORABLE EVELYN BROOKS,
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE RICHARD SMITH,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the
Administrative Law Judge filed February 10, 2010.

The Administrative Law Judge entered the following
findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on August 27, 2009, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulations that claimant's AR-C form was filed on or about June 25k 2009 is also hereby accepted as fact.
3. The claimant's claim for compensation benefits is barred by the statute of limitations codified at A.C.A §11-9-702(b) (1) in that his claim was not filed within one year from the date of last payment of compensation or two years from the date of injury.

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.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. The problem with the majority's interpretation of the law is that the statute could not have run on an initial claim, since the case was never dismissed, and the treating physician had recommended referral and treatment. See Eskola v. Little Rock School District, 93 Ark. App. 250, 218 S.W.3d 372 (2005). The AR-2 Form, stating that the respondent was controverting this claim, was filed on November 13, 2007, indicates a back injury, and has a Workers' Compensation File Number of F711891. The respondent never filed a Motion to Dismiss the claim. There is no evidence that it was ever dismissed with or without prejudice. The claimant was still in need of treatment, and

the respondent was aware of the recommended treatment. The treatment was part of the initial claim. Arkansas Code Annotated §11-9-702(a)(4) provides:

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 limitations periods specified in subdivisions (a)-(1)-(3) of this section.

Here, the claimant's initial claim was never dismissed. Therefore, the statute of limitations has not run.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner