

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G903144

PRESTON ALLEN, EMPLOYEE	CLAIMANT
STAFFMARK INVESTMENTS, LLC, EMPLOYER	RESPONDENT NO. 1
ACE AMERICAN INS. CO., CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND, CARRIER	RESPONDENT NO. 2

OPINION FILED MARCH 28, 2023

Hearing before Administrative Law Judge Steven Porch on March 10, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant Preston Allen is representing himself, *pro se*.

Respondent No. 1 was represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 is represented by Ms. Christy L. King, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A prehearing telephone conference was conducted on January 17, 2023, in the above-styled case. Claimant was *pro se*. Respondent No. 1 was represented by Ms. Melissa Wood, Attorney at Law, of Little Rock, Arkansas. Respondent No. 2 was represented by Ms. Christy L. King, Attorney at Law, of Little Rock, Arkansas. Prehearing information filings have previously been submitted by the parties.

Claimant was advised that he has the right to an attorney, that the law limits what fee an attorney may charge for representing a claimant, and that he had the right to

ALLEN – G903144

postpone the conference to obtain representation. Being fully advised of his rights and responsibilities, Claimant nonetheless elected to represent himself.

The parties have agreed to the following stipulation:

1. The previous decisions in this matter are binding on this proceeding under the Law of the Case Doctrine.

By agreement of the parties, the issues to be presented for determination are limited to the following:

1. Whether Claimant is entitled to additional medical treatment of his stipulated compensable right arm, right leg, and lower back injuries.
2. Whether Claimant sustained a compensable injury to his cervical spine by specific incident.
3. Whether Claimant is entitled to reasonable and necessary medical treatment of his alleged cervical spine injury.
4. Whether Claimant is entitled to an impairment rating and permanent partial disability benefits in connection with his alleged cervical spine injury.
5. Whether Claimant is entitled to benefits under Ark. Code Ann. § 11-9-505(a) (Repl. 2012).
6. Whether Claimant is permanently and totally disabled or, in the alternative, entitled to wage loss disability benefits.

All other issues have been reserved. Two dispositive issues were raised during the hearing. The first was whether the issues raised in this hearing were precluded by

the Doctrine of Res Judicata and the Law of the Case Doctrine. The second dispositive issue is whether the issues are precluded by the statute of limitations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. Claimant's first issue, whether he is entitled to additional medical treatment of his stipulated compensable right arm, right leg, and lower back injuries, have been fully, fairly, and completely litigated under a previous claim filed by Claimant. Therefore, I find that Res Judicata/Law of the Case Doctrine, applies to this issue and it will not be further addressed in this opinion since those issues were previously resolved.
3. The Commission further finds that issues 2-6 are barred by the statute of limitations. As a result, all reserved issues are likewise barred by the statute of limitations and will not be addressed in this opinion. This case is hereby dismissed.

RES JUDICATA/LAW OF THE CASE DOCTRINE

Facts of Case.

The date of injury for this claim is May 8, 2019. An AR-2 form was filed with the Commission on May 16, 2019, accepting strains/contusion to lower back, right shoulder, right arm, and the right leg by Respondent No. 1. An AR-C was filed for this claim on May 28, 2019, by the claimant's previous attorney, stating that "claimant was moving a sheet of metal when he slipped on fluids on the floor causing him to fall and the metal hit his back. Claimant sustained injuries to his back, right shoulder, right leg, and other whole body." All boxes except for the Other box were marked in both initial and additional benefits. The Claimant's attorney was granted an order to withdraw from the claim on December 6, 2019.

A previous hearing was held in this claim on August 19, 2020. The claimant was not represented by an attorney and was therefore Pro se. In Perry v. State, 287 Ark. 384, 699 S.W.2d 739 (1985), the court noted that "[W]e hold **pro se** litigants to the same requirement to which we hold attorneys. Weston v. State, 265 Ark. 58, 576 S.W.2d 705 (1979)." According to the Administrative Law Judge Opinion filed on November 10, 2020, the issues were:

1. Whether the Claimant is entitled to additional medical treatment and payment for unpaid medical bills.
2. Whether the Claimant has reached maximum medical improvement.
3. Whether the Claimant is entitled to temporary total disability benefits.
4. Whether the Claimant is entitled to permanent partial disability benefits.

5. All other issues, including Claimant's right to permanent and total disability benefits are reserved.

The Administrative Law Judge made the following Findings of Fact and Conclusions of Law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee/carrier relationship existed on May 8, 2019, when Claimant sustained compensable injuries to his lower back, right arm, and right leg.
3. The Claimant earned an average weekly wage of \$645.35, which entitles him to weekly compensation benefits of \$430.00, for temporary total and \$323.00 for permanent partial disability.
4. The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment and payment for unpaid medical bills incurred by the Claimant at Great River Medical Center in October of 2019.
5. The preponderance of the evidence establishes that the claimant reached maximum medical improvement on August 19, 2019.
6. The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits after August 19, 2019.
7. The claimant has failed to prove by a preponderance of the evidence that he is entitled to permanent partial disability benefits.
8. All other issues are reserved.

ALLEN – G903144

Claimant appealed this decision to the Full Commission that affirmed the Administrative Law Judges' decision. Claimant next appealed his decision to the Arkansas Court of Appeals. The Arkansas Court of Appeals affirmed the Commission's decision for claims relating to Claimant's injuries to his lower back, right arm, and right leg. *Allen v. Staffmark Invs.*, 2022 Ark. App. 252, 646 S.W.3d 646 (2022). It should be noted that Claimant's cervical spine injury occurred on the same date as his other injuries, May 8, 2020. The Claimant has stated, in his March 10, 2023, full-hearing testimony, that his cervical spine injury occurred on the same date as his other injuries in his previous case but was not specifically litigated. However, Claimant's AR-C, filed on May 28, 2019, does not specifically mention a neck or cervical spine injury. The claimant's first specific request for benefits for his cervical spine were made at a prehearing telephone conference held on December 19, 2022.

This Court has requested briefs from both sides on March 10, 2023, on the issue of when was the last payment of benefits made by the Respondent regarding the May 8, 2019, injury. Those briefs have been received, blue-backed and made a part of the official record for this case.

Discussion.

Claimant and Respondents have both stipulated that previous decisions in this matter are binding on this proceeding under the Law of the Case Doctrine/Res Judicata. This is a threshold issue.

The doctrine of *res judicata* applies to decisions of the Commission. *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996). In *Gibbs v. Moffatt*

ALLEN – G903144

Logging, 2007 AWCC 109, Claim No. F403435 (Full Commission Opinion filed September 12, 2007), the Commission set forth the applicable law concerning this:

The purpose of the *res judicata* doctrine is to put an end to litigation by preventing a party who had one fair trial on a matter from relitigating the matter a second time. *Cox v. Keahey*, 84 Ark. App. 121, 133 S.W.3d 430 (2003), citing *Brandon v. Arkansas W. Gas Co.*, 76 Ark. App. 201, 61 S.W.3d 193 (2001). *Res judicata* applies where 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). 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 turn, the Arkansas Court of Appeals in *Thurman v. Clarke Industries, Inc.*, 45 Ark. App. 87, 872 S.W.2d 418 (1994) explained the Law of the Case Doctrine as follows:

Moreover, matters decided on a prior appeal to this court are the law of the case and govern our actions on a subsequent appeal to the extent that we are bound by them even if we were inclined at the latter time to say that we had been wrong initially.

Considering these standards, Claimant's entitlement to additional medical treatment for his stipulated compensable right arm, right leg, right shoulder, and lower back injuries that occurred on May 8, 2019, were litigated before Judge Barbara Webb, who found on November 20, 2020, that Claimant failed to prove entitlement to such benefits. This finding was affirmed and adopted by the Full Commission, and then appealed to the Arkansas Court of Appeals. The Arkansas Court of Appeals affirmed the Commission's decision. *Allen v Staffmark Invs*, 2022 Ark. App. 252, 2022 Ark. App. LEXIS 226 (2022). The Doctrine of Law of the Case prohibits a court from reconsidering

ALLEN – G903144

issues of law and fact that have already been decided on appeal. *Cadillac Cowboy, Inc. v. Jackson*, 347 Ark. 963, 69 S.W.3d 383 (2002). 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 issues in question. *Cater v. Cater*, 311 Ark. 627, 846 S.W.2d 173 (1993); *Pine Bluff Warehouse v. Berry*, 51 Ark. App. 139, 912 S.W.2d 11 (1995). Thus, I find that Claimant did have an opportunity to litigate Issue 1 fully and fairly before the Administrative Law Judge and the Full Commission during his previous claim. The Claimant has not presented any evidence to the contrary. The Arkansas Court of Appeals reviewed the decision of the Full Commission and did not note any irregularities with Claimant's opportunity to litigate his case fully and fairly. I further find that Issue 1 has been resolved by previous final court ruling on the merits and will not be addressed in this opinion.

STATUTE OF LIMITATIONS

Standards. Considering the facts previously stated in this opinion, the evidence before me is clear, and I find the cervical spine injury and the issues with it were not a part of Claimant's original claim. Under Ark. Code Ann. §11-9-702(b)(1) (Repl. 2012):

In cases in which 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.

The burden rests on Claimant to prove that his claim was timely filed. *Stewart v. Ark. Glass Container*, 2010 Ark. 198, 366 S.W.3d 358; *Kent v. Single Source Transp.*, 103 Ark. App. 151, 287 S.W.3d 619 (2008). Under Ark. Code Ann. § 11-9-705(a)(3)

ALLEN – G903144

(Repl. 2012), he must prove this by a preponderance of the evidence. The standard “preponderance of the evidence” means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

Discussion. As previously stated, regarding the original claim, the Respondents initially accepted Claimant’s injury as compensable and paid benefits to the Claimant. The last payment of benefits was on August 19, 2019. The statute of limitations for additional compensation began to run one year from the date of the last benefit payment or two years from the date of injury, whichever is greater. Ark. Code Ann. §11-9-702(b)(1) (Repl. 2012); *See also*, *Wynne v. Liberty Trailer and Death and Permanent Total Disability Trust Fund*, 2022 Ark. 65, 641 S.W.3d 621 (2022)(holding the statute of limitations on a request for additional benefits commences when the last payment, whether for disability or medical benefits, was made). This means the final day to bring forth Claimant’s cervical spine claim would be May 8, 2021.

The Court finds, based on the evidence, the last benefit payment for Claimant was made on August 19, 2019. Since Claimant has one year from the last medical benefit payment or two years from the date of injury, whichever is greater, to file for additional medical benefits, the Court finds the Claimant had until May 8, 2021, the later date, to file his claim for additional benefits with the Commission. The Court further finds the Claimant did not specifically request benefits for his alleged cervical spine injury until December 19, 2022, well after the statute of limitations have run.

Though it should be noted, the Claimant feels the statement contained in his AR-C, filed with the Commission on May 28, 2019, tolls the statute of limitations for his cervical spine injury. The Claimant believes that his cervical spine injury falls under the statement in his AR-C that reads, “and other whole body.” I find this phrase in Claimant’s AR-C to be generic and insufficient to toll the statute of limitations and preserve the cervical spine issue. *See Walmart Assocs v. Armstrong*, 2017 Ark. App. 175, 516 S.W.3d 310 (2017)(finding Claimant’s generic form AR-C, that contained no specific injury and had all benefit boxes checked, was the same as no filing and was insufficient to toll the statute of limitations).

Only one Form AR-C has been filed in connection with this matter. That is the means for filing a “formal claim.” *See Yearwood v. Wal-Mart Stores, Inc.*, 2003 AR Wrk. Comp. LEXIS 739, Claim No. F201311 (Full Commission Opinion filed June 17, 2003). *See also Sinclair v. Magnolia Hospital*, 1998 AR Wrk. Comp. LEXIS 786, Claim No. E703502 (Full Commission Opinion filed December 22, 1998)(a claim is “typically” filed *via* a Form AR-C). I find the formal claim for this matter was not filed with the Commission by May 8, 2021, rather Claimant brought it to the attention of both the Commission and Respondents December 19, 2022, during the prehearing telephone conference, more than a year and a half after the statute of limitations deadline. I further find that Claimant failed to bring forth his cervical spine claim by the May 8, 2021, the statute of limitations deadline, thus forming my basis for finding the remainder of Claimant’s claim, Issues 2 through 6, and all other reserved issues, are barred by the statute of limitations.

CONCLUSION

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby denied and dismissed.

IT IS SO ORDERED.

Honorable Steven Porch
Administrative Law Judge