

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: G509436

**GERLINE CHARLES,
EMPLOYEE**

CLAIMANT

**UNIVERSITY OF ARKANSAS FOR MEDICAL
SCIENCES (UAMS), EMPLOYER**

RESPONDENT NO. 1

**PUBLIC EMPLOYEE CLAIMS DIVISION,
CARRIER/THIRD PARTY ADMINSTRATOR (TPA)**

RESPONDENT NO. 1

**DEATH & PERMANENT TOTAL DISABILTY TRUST
FUND**

RESPONDENT NO. 1

OPINION FILED AUGUST 15, 2023

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK in Little Rock, Pulaski County, Arkansas.

Claimant appeared pro se/unrepresented.

Respondents No. 1 represented by the Honorable Charles H. McLemore, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the Honorable Christy L. King, Attorney at Law, Little Rock, Arkansas. Ms. King waived her appearance at the hearing.

Statement of the Case

On May 17, 2023, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing telephone conference was conducted on March 29, 2023, from which a Pre-hearing Order was filed that same day. A copy of this order and the parties' responsive filings have been marked as Commission's Exhibit 1 and made a part of the record without objection.

Stipulations

During the pre-hearing telephone conference, and/or during the hearing the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. That on or about June 9, 2010 the Claimant sustained a compensable "medical only" lumbar spine injury. (Tr. 9)
3. That the Claimant's average weekly wage (AWW) on the date of her accidental injury was \$684.07, with weekly corresponding compensation rates of \$456.00 for temporary total disability (TTD) compensation and \$342.00 for permanent partial disability (PPD) benefits, respectively.
4. Respondents No. 1 have controverted this claim for additional medical benefits.
5. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Issues

By agreement of the parties, the issues to be litigated at the hearing included the following:

1. Whether this claim is barred by the statute of limitations.
2. Whether the Claimant is entitled to additional medical treatment for her back injury.

Contentions

The respective contentions of the parties are as follows:

Claimant: The Claimant contends that on June 9, 2010 she was injured while returning sterile instrument cases to the storage shelves for the One-Day Surgery Department. Claimant contends that when she reached to place an ACL tray on the shelf, she caught a kink across her lower back and right buttock. She was unable to move until the spasm released. The Claimant is requesting to be reinstated and reimbursed for medical bills that she paid and additional ongoing medical treatment for her low back.

Respondents No. 1:

Respondents No. 1 contend that the Claimant reported having an injury to her back on June 25, 2009, which Respondents No. 1 accepted as medical only, providing initial treatment, and the

Claimant did not miss sufficient work to be entitled to temporary disability benefits. The last visit Respondents No. 1 are aware of was September 22, 2009 for this date of injury. The Claimant reported having a lumbar injury on June 9, 2010 which was accepted by the Respondents No. 1 as medical only and medical benefits have been paid to or on behalf of the Claimant by Respondents No. 1 on this claim. Medical treatment has been conservative, Claimant treated sporadically, and the last visit Respondents No. 1 are aware of was February 5, 2018. After the Claimant's employment with Respondents No. 1 ended April 8, 2011, the Claimant collected unemployment benefits, then admittedly found new employment elsewhere where she worked without restriction until her employment ended there as well.

The Claimant filed a form AR-C on December 18, 2015 claiming initial and additional benefits for an injury to her low back and right buttock occurring June 25, 2009, but did not request a hearing for any benefits. The Claimant indicated in a March 30, 2020 email to the Commission that she desired a hearing on this claim, but did not pursue a hearing for any benefits, so Respondents No. 1 filed its Motion to Dismiss for Want of Prosecution on December 20, 2021 which the Claimant objected to. The Claimant demanded a hearing, but at the Claimant's request, no hearing was set, and the file returned to the Commission's general files May 24, 2022. Respondents No. 1 again filed a motion to dismiss the Claimant's claim for lack of prosecution on January 11, 2023, which Claimant has objected to.

Respondents No. 1 contend that the Claimant cannot meet her burden of proving that she timely filed a claim for benefits, as the statute of limitations now bars the Claimant from pursuing benefits on her claim(s). Respondents No. 1 further contend that the Claimant cannot meet her burden of proving that she is entitled to additional medical treatment related to a compensable injury occurring either June 25, 2009 or June 9, 2010. The Claimant cannot

establish that she is in or has been in a healing period and entitled to TTD benefits for a compensable injury(ies). Respondents No. 1 contend that the Claimant cannot be entitled to TTD benefits for time periods she was admittedly working, or receiving unemployment benefits pursuant to Ark. Code Ann. §11-9-506, furthermore, the Claimant cannot establish she was in a healing period and unable to work when she admittedly did work.

Respondents No. 1 reserve the right to raise additional contentions, or to modify those stated herein, pending the completion of discovery.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witness and observe her demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.
3. This claim for additional medical benefits for the Claimant's low back injury, which occurred June 9, 2010 is barred by the statute of limitations under Ark. Code Ann. §11-9-702 (b) (1) because she failed to timely file a claim for additional medical benefits by March 25, 2019, and there is no document of record that can be relied on to support a finding that it contains the specific language required by section 11-9-702 (c).
4. Therefore, the remaining issue relating to additional medical treatment has been rendered moot and not discussed in this Opinion.

Summary of Evidence

During the hearing, the only witness to testify was Ms. Gerline Charles/the Claimant.

The record consists of the May 17, 2023 hearing transcript and the following exhibits: Specifically, Commission's Exhibit No. 1 includes the Commission's Prehearing Order filed on

March 29, 2023 and the parties' responsive filings; Claimant's Exhibit 1 consists of Medical Records with Index, which is made up of fifty-one pages; and Respondents No. 1, Exhibit 1 is a Medical Evidence with Index, which comprises eighty numbered pages; and they also offered into evidence a second exhibit of Documentary Evidence with Index consisting of eighty pages, which has been marked as Exhibit 2.

Testimony

The Claimant, age 65, began working for UAMS in 1990. She initially worked as a sterilization processing technician. In this position, the Claimant's employment duties included but was not limited to the handling and processing of surgical instruments. She specifically testified that she was responsible for the cleaning and decontaminating heavy trays of surgical instruments. The Claimant also set the instruments up that were to be used by the doctors who performed surgical procedures.

On June 9, 2010, the Claimant's job title was Core Technician. According to the Claimant, in that position, she worked back and forth between sterilization processing and one-day surgery area. The Claimant verified that she injured her back on June 9, 2010, while performing her employment duties. She confirmed that the respondent-carrier accepted her low back injury as a medical only claim.

She gave the following description of her back injury of June 9, 2010:

Q When you sustained an injury to your back. Briefly, what happened?

A I was – We have to put instruments back on the – back on the shelves once the cases have been sterilized and processed, and I had a ACL tray, which it was getting close to time -- well, it was closing -- and I was cleaning up - -

I picked up the ACL tray, which weighs about anywhere from 40 to 50 pounds.

And when I reached to pick it up, when I got ready to turn to put it on the shelf, I caught a real back kink in my back, my right hip, and it went down my leg, and I -- and it stayed there for a while. And then I kind of eased -- Finally it let go.

And I didn't think a lot about because, you know, I had hurted myself several times before but I didn't realize how badly I had injured my back.

The Claimant verified that she reported her injury to management. She testified that she received medical treatment for her back injury at the Spine Center in the form of physical therapy and medications. The Claimant also treated at OrthoArkansas under the care of Dr. Steven Paulus. According to the Claimant, she underwent steroid injections to her back, which was performed by Dr. Paulus, and he prescribed more medications.

As of the date of the hearing, the Claimant was not working. She confirmed that she last worked for UAMS in 2011. According to the Claimant, she was fired due to tardiness. Although the Claimant maintained that she last received treatment for her back in 2023, she was unable to provide a medical record or any other evidence of record demonstrating that she received treatment for her back during this period of time.

The Claimant initially maintained that she filed a Form AR-C with the Commission for her June 2010 back injury, which had been made part of the evidentiary record. However, the Claimant finally admitted that her filing of a claim for additional benefits in this matter was made when she filed her prehearing questionnaire documents in 2023. She verified that she made this filing on February 17, 2023.

On cross-examination, the Claimant verified that her deposition was taken on May 11, 2022. She admitted that no doctor has ever recommended surgery for her back. The Claimant essentially admitted that she previously injured her back on June 25, 2009. She admitted that she gave her employer/UAMS notice of her June 2009 back injury, and they provided her with medical treatment for her injury.

The Claimant verified that she injured her back again in 2010, while lifting a heavy tray of ACL surgical instruments. According to the Claimant, the tray consisted of instruments used for reconstruction of a knee, including tools such as wire cutters, wire pliers, wrenches, and drills. The Claimant admitted that she injured her back while removing instrument trays from a cart. She admitted that she reported her most recent back injury of June 9, 2010, to her supervisor and signed an Employee Notice of Injury Form. This document was signed by the Claimant on June 22, 2010. The Claimant admitted that she had extensive conservative treatment for her back. However, she confirmed that no surgery has been recommended for her back injury of June 2010. According to the Claimant, she has been on a new “pill” for her back since the beginning of June, but it has made her jittery, and caused her “head to swim” and incontinence. The Claimant testified that she is unable to take narcotic pain medications such as Hydrocodone. She further testified that she learned this years ago when she had her gallbladder removed.

Under further questioning, the Claimant maintained that she was fired because she had been taking Tylenol and Gabapentin for her back all day and night, and these medications caused her to be late for work. As a result, she had some disciplinary problems with tardiness while working for UAMS. She also admitted that she had problems with excessive alcohol use. However, the Claimant denied drinking while at work. She admitted that after leaving UAMS in 2011, a few months later she went to work at St. Vincent’s and worked there for about two years.

Regarding her medical treatment for her back since February 2018, the Claimant testified that they have done some injections on her own. She also takes over-the-counter medications for her back.

On further redirect-examination, the Claimant confirmed that the respondent-carrier last paid for medical treatment in 2018 due to her 2010 back injury. She further confirmed that the

last time they actually paid on her 2010 back injury would have been for her February 5, 2018, doctor's visit.

Documentary Evidence

A review of the Pay Log Report for the Claimant's June 9, 2010 back injury shows that her last medical visit was with OrthoArkansas on February 5, 2018. Further review of the payout report for the Claimant's 2010 back injury was paid for by the respondent-carrier via checks issued on March 25, 2018, in the amounts of \$89.00 and \$66.60.

Adjudication

Statute of Limitations

Although the Claimant previously sustained an admittedly compensable "medical only" injury to her low back on June 25, 2009 while working for UAMS, this prior injury, is not at issue at this time.

Currently, this claim for additional benefits pertains exclusively to the Claimant's second admittedly compensable low back injury, which occurred on June 9, 2010. Since this is a claim for additional benefits, the crucial issue for determination is whether the Claimant filed a timely request for additional medical benefits for her June 2010 back injury.

Therefore, Arkansas law limits the time in which a claim for additional workers' compensation benefits may be filed. The proper statute of limitations is set forth in Ark. Code Ann. §11-9-702 (b) (1), (c):

(b) TIME FOR FILING ADDITIONAL COMPENSATION:

- (1) 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.

- (c) A claim for additional compensation must specifically state that it is a claim for additional compensation. Documents which do not specifically request additional benefits shall not be considered a claim for additional compensation.

Our supreme court stated that a Claimant must prove that he or she acted with the time allowed for filing a claim for additional compensation. *White Cnty. Judge v. Menser*, 2020 Ark. 140, at 8, 597 S.W. 3d at 645.

Here, on June 9, 2010, the Claimant worked for UAMS in the One-Day Surgery Department, as a Core Technician. Her employment duties included both sterilizing surgical instruments and setting them up for surgical procedures. It is undisputed that on June 9, 2010, the Claimant injured her back while lifting a tray of instruments. The Claimant testified that she caught a “kink” in her back and hip during this lifting incident. She promptly reported her injury to management. The parties stipulated that the respondent-carrier accepted this as a medical only claim for the Claimant’s low back injury of June 2010. Both the Claimant’s testimony and the documentary evidence show that the insurance-carrier has paid for extensive conservative medical treatment for the Claimant’s low back injury. The Claimant last received medical treatment for her back on February 5, 2018. The carrier issued a check on March 25, 2018. She confirmed that she did not make a claim for additional medical benefits until the filing of her responsive filings, which was done on February 17, 2023.

The time limitation for filing a claim for additional benefits is set out above in Ark. Code Ann. §11-9-702 (b)(1). Per this section, a claim for additional benefits shall be barred unless a Claimant files a claim for additional compensation within one (1) year from the date of last payment of compensation or two (2) years from the date of the injury, whichever is greater. Two years from the date of injury would be June 9, 2012. One year from the last payment of benefits

would be by March 25, 2019. Because the one-year date is greater, the Claimant was required to file a claim for additional benefits by March 25, 2019 which is one year from the date of last payment of compensation.

Here, this claim for additional benefits is barred by the statute of limitations set forth above because there is nothing in the record demonstrating that the Claimant ever filed a document that contains the specific language required by Ark. Code Ann. §11-9-702 that would suffice to support a finding that she made a request for “additional” benefits to be considered a claim for additional benefits. Moreover, the Claimant admitted that she did not assert a claim for additional medical treatment until February 17, 2023, which was when she filed of her responsive pleadings. Even this filing is beyond the one year from the date of last payment of compensation, which occurred on March 25, 2019.

Based on the foregoing, I find that this claim is barred by the statute of limitations. Therefore, the remaining issue relating to additional medical treatment has been rendered moot and not discussed in this Opinion.

Order

Based on the the forgoing findings of fact, unfortunately this claim is barred by the statute of limitations set forth in section 11-9-702. Therefore, this claim for additional benefits is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

HON. CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE

