

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H001761

MONICA BARNES, Employee	CLAIMANT
MCKEE FOODS CORPORATION, Employer	RESPONDENT
CANNON COCHRAN MANAGEMENT SERVICES, Carrier	RESPONDENT

OPINION FILED FEBRUARY 25, 2025

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by R. SCOTT ZUERKER, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On February 5, 2025, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on December 4, 2024 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer relationship existed between the parties on March 31, 2019.
3. Respondents have controverted this claim in its entirety.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's right knee in March 2019.
2. Related medical.
3. Temporary total disability benefits.
4. Statute of Limitations.

The claimant contends she injured her right knee while working for respondent in March 2019. She requests payment of medical and temporary total disability from September 15, 2022 through a date yet to be determined.

The respondents contend that claimant did not sustain a compensable injury as that term is defined by Act 796 of 1993. In addition, respondents raise the Statute of Limitations as an affirmative defense. Respondents contend they are not responsible for any medical or indemnity benefits.

From a review of the record as a whole, to include 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, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on December 4, 2024 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant's claim for compensation benefits is barred by the statute of limitations.

FACTUAL BACKGROUND

Claimant began working for respondent on September 17, 2012, as a makeup line operator. She alleges that she injured her right knee on or about March 31, 2019. She testified that on that day after fixing her machine “I stepped down off of the platform and I fell down and I could no longer get up.” She testified that she reported the incident to her supervisor and was taken to the nurse’s station.

Claimant was sent by respondent to Arkansas Occupational Health Clinic where she was evaluated by Dalana Rice, APRN, on April 4, 2019. Her medical report contains the following history of injury:

We discussed the method of injury, which she states was walking from one area to another. She says that she was walking on a level surface when she suddenly felt a sharp pain in the right knee. She tried to continue working, but states that the pain was too severe for her to continue standing, so she was allowed to sit for the remainder of the shift.

Her report also states:

Today, Ms. Barnes is walking with a slight limp in the exam room and displays difficulty getting on the exam table. However, I observed her walking down the hall without a limp. When she saw me, she began limping again.

Rice indicated that she did not feel that claimant had a work-related condition based on x-rays that revealed degenerative changes. She prescribed claimant over-the-counter medications and instructed her to seek additional medical treatment from her primary care physician.

The next medical report is from Dr. Matthew Coker dated January 20, 2020, which indicates that claimant gave a history of twisting her knee. Dr. Coker was concerned about a possible meniscus tear and ordered an MRI scan. The MRI was performed on January

30, 2020, and did reveal a medial meniscus tear. Dr. Coker recommended surgery but according to claimant, she could not afford the procedure. Claimant subsequently sought medical treatment from Dr. Hamby and he performed partial knee replacement surgery on September 15, 2022.

Claimant has filed this claim contending that she suffered a compensable injury to her right knee on or about March 31, 2019. She requests payment of related medical treatment and temporary total disability benefits.

ADJUDICATION

Claimant contends that she suffered a compensable injury to her right knee while working for respondent in March 2019. Respondent contends that claimant's claim is barred by the statute of limitations. Although respondent has controverted this claim, it did send claimant to see Dalana Rice on April 4, 2019, and paid for that visit as reflected in the payment record submitted into evidence. Therefore, claimant's claim for compensation is a claim for additional compensation benefits. Pursuant to A.C.A. §11-9-702(b)(1) a claim for additional compensation shall be barred unless it is filed with the Commission within one year of the date of the last payment of compensation, or two years from the date of injury, whichever is greater. Furthermore, claimant has the burden of proving that she acted within the time allowed for filing a claim for additional compensation benefits. *Kent v. Single Source Transportation, Inc.* 103 Ark. App. 151, 287 S.W. 3d 619 (2008).

After reviewing the evidence in this case impartially and without giving the benefit of the doubt to either party, I find that claimant's claim for compensation benefits was not

timely filed and is therefore barred.

As previously noted, claimant was seen by Dr. Coker on January 20, 2020, and he ordered an MRI scan of claimant's right knee. This scan was performed on January 30, 2020. Claimant testified that after she got the results of the MRI scan, she took a copy of the results to Vickie Owens, the employee health services administrator for respondent. Owens is responsible for the nurses at respondent and oversees workers' compensation claims. Owens testified that when claimant gave her a copy of the MRI results, she informed Claimant that the claim was being denied. Subsequently, respondent's TPA filed a First Report of Injury form dated March 23, 2020, with an injury date of March 31, 2019. Respondent also filed Form AR-2 indicating that it was controverting the claim.

Following receipt of these forms, a notice was sent by the Commission dated April 7, 2020, stating:

THIS IS TO LET YOU KNOW THAT A CASE-FILE ON YOUR WORKERS' COMPENSATION CLAIM HAS BEEN OPENED AT THE COMMISSION. IF QUESTIONS OR PROBLEMS ARISE, PLEASE CALL (501) 682-3930 OR 1 (800) 250-2511 AND ASK TO SPEAK TO A LEGAL ADVISOR, UNLESS YOU ARE REPRESENTED BY AN ATTORNEY.

Thereafter, claimant continued to receive medical treatment and eventually underwent surgery on her right knee by Dr. Hamby on September 15, 2022. Claimant was terminated by Respondent in May 2024. She testified that after her termination she was going through her paperwork and noticed the form letter sent to her by the Commission dated April 7, 2020. She then wrote a letter to the Commission describing her injury and, in that letter, stated: "I am seeking advice and help regarding this matter." This letter was interpreted as a request for benefits and resulted in the scheduling of a

prehearing conference and ultimately the hearing that was conducted on February 5, 2025.

Thus, claimant's claim for compensation benefits was not filed with the Commission until May 2024. Claimant acknowledged this at the hearing:

Q But prior to seeing that note after your termination, you had not filed any request for benefits with the Workers' Compensation Commission; correct?

A I don't remember, but I think that is correct.

Q And you were not terminated until sometime in May of 2024; is that correct?

A Yes. May of 2024 is when I received the letter from the HR.

Claimant's filing of the claim for workers' compensation benefits in May 2024, was more than two years after the date of injury in March 2019 and it was also more than one year from the date of last payment of compensation (claimant's visit with Rice on April 4, 2019). Therefore, her claim for compensation benefits was not filed within the statutory time period as required by A.C.A. §11-9-702(b)(1). Accordingly, I find that claimant's claim for compensation benefits is barred by the statute of limitations.

ORDER

Claimant's claim for compensation benefits is barred by the statute of limitations. She did not file a claim for compensation benefits until May 2024, more than year from the date of last payment of compensation and more than two years from the date of her alleged injury. Therefore, her claim for compensation benefits is hereby denied and dismissed.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$320.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE