BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F802694

DONNA CLARY, EMPLOYEE **CLAIMANT**

PATHFINDER, INC./ATA WORKERS' COMPENSATION SELF-INSURANCE TRUST, EMPLOYER/INSURANCE CARRIER **RESPONDENT**

RISK MANAGEMENT RESOURCES, INC./TPA **RESPONDENT**

OPINION AND ORDER FILED JANUARY 26, 2021

Hearing conducted on October 29, 2020, before the Arkansas Workers' Compensation Commission, Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by Mr. Phillip J. Wells, Wells and Wells, Jonesboro, Craighead County, Arkansas.

The respondent was represented by Ms. Melissa Wood, Worley, Wood & Parrish, P.A., Little Rock, Pulaski County, Arkansas. (Please note: The court reporter's reference to, "Mr. Swearingen" on page 5 of the Hearing Transcript is a mistake. "Mr. Swearingen" did not participate in this hearing.)

INTRODUCTION

In the Prehearing Order filed October 2, 2020, the parties agreed to the following stipulations, which they affirmed on the record at the hearing:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.

2. The employer/employee/carrier-TPA relationship existed at all relevant times including January 17, 2008, when the claimant sustained a compensable injury to her right shoulder.

3. The claimant's average weekly wage (AWW) was $484.49, entitling her to weekly compensation rates of $323.00 for temporary total disability (TTD), and $242.00 for permanent partial disability (PPD) benefits.

4. On August 6, 2008, the claimant's treating physician, Dr. Stephen Hudson, assigned her a seven percent (7%) to the body-as-a-whole (BAW) impairment rating which the respondent accepted and paid.

5. The respondent has controverted the payment of any additional medical or indemnity benefits in this claim.

6. The parties specifically reserve any and all other issues for future determination and/or hearing.

(Commission's Exhibit 1 at 1-2; Hearing Transcript at 5). Pursuant to the parties' mutual agreement, the issues litigated at the hearing were:

1. Whether the claimant's current claim for additional medical treatment is barred by the applicable statute of limitations.

2. If the claimant's current request for additional medical benefits is not barred by the applicable statute of limitations, whether the requested additional medical treatment is related to, and reasonably necessary for, treatment of her January 17, 2008, compensable injury; or is the result of an independent intervening cause unrelated to her January 2008 compensable injury.

3. Whether the claimant's attorney is entitled to a controverted fee on these facts.

4. The parties specifically reserve any and all other issues for future litigation and/or litigation.

(Comms'n Ex. 1 at 2; T. at 5).

The claimant contends that when she filed a Form AR-C with the Commission on February 10, 2020, requesting additional medical treatment, twelve (12) months had not lapsed from the date the respondent last paid for medical treatment related to her compensable right shoulder injury. Therefore, the claimant contends the applicable statute of limitations governing a claim for additional benefits had not expired as a matter of law; and she is entitled to pursue a claim for additional medical treatment and any associated indemnity benefits. (Comms'n Ex. 1 at 2-3; T. 5-9).

The respondent contends it has paid all appropriate medical and indemnity benefits associated with this claim. Further, the respondent contends the applicable statute of limitations for both additional medical and indemnity benefits has expired. Specifically, the respondent contends it is undisputed it last paid PPD benefits on or about [January 14, 2009] [not March 14, 2009, as stated in Comms'n's Ex. 1 at 3; *See,* Respondent's Exhibit 2 at 14-17]. After this, there were two (2) gaps

in her medical treatment related to her compensable right shoulder injury, both of which exceeded two (2) years from the injury date, and one (1) year from the date the respondent last paid either medical or indemnity benefits. The first more-than-one (1)-year gap in her medical treatment was from September 10, 2010, until January 19, 2012; and the second was from July 16, 2013, until October 28, 2014. The claimant did not file her Form AR-C with the Commission until February 10, 2020; therefore, the applicable statute of limitations had expired not just once, but twice, before the claimant made this claim for additional benefits. (Comms'n Ex. 1 at 3; T. 9-11) (Bracketed material added).

Alternatively, the respondent contends the requested additional medical treatment is neither related to nor reasonably necessary for treatment of her compensable January 17, 2008, right shoulder injury. In his March 9, 2010, report Dr. Stephen Hudson stated the claimant was there for "new problems." A March 15, 2010, MRI without contrast showed a full thickness rotator cuff tear. The claimant was no longer working for the respondent-employer (Pathfinder) at the time. Therefore, the respondent contends any need for medical treatment the claimant may have at this time is the result of an independent intervening cause, and not her January 2008 compensable injury. (Comms'n Ex. 1 at 3; T. 9-11).

The record consists of the hearing transcript and any and all exhibits contained therein and attached thereto; as well as the parties' blue-backed post-hearing briefs.

STATEMENT OF THE CASE

The claimant, Ms. Donna Clary (the claimant), was 59 years-old on the date of the hearing, and she was 48 years-old at the time of her January 17, 2008, compensable right shoulder injury. She started working for Pathfinder as a live-in caregiver in approximately 2007. (T.23-24). On January 17, 2008, she was performing her job duties as a live-in caregiver when she injured her right shoulder.

Diagnostic tests eventually revealed she had sustained a partial "full thickness" tear of the rotator cuff in her right shoulder. She underwent surgery by Dr. Stephen Hudson, an orthopedic surgeon associated with OrthoArkansas in Little Rock, to repair the torn rotator cuff.

Dr. Hudson opined the claimant reached maximum medical improvement (MMI) as of August 6, 2008. He assigned her an 11% permanent anatomical impairment rating to her right upper extremity, which equates to 7% BAW. (Claimant's Exhibit 1 at 1-12; Respondent's Exhibit 1 at 1-2; T. 12-13). Dr. Hudson released the claimant "to full work duty with the exception that she is not able to do any significant overhead activity with this arm due to her motion impairments and this is a permanent restriction." The respondent accepted the 7% BAW rating and paid it out between August 20, 2008 and January 13, 2009. The claimant requested a lump sum payment of PPD benefits, which the Commission approved on January 7, 2009. (CX1 at 12; RX1 at 2; RX2 at 14-17). (Note: The medical index of CX1, page 15, inadvertently and incorrectly lists the claimant as having seen Dr. Hudson on "03/19/20". This date for this visit should correctly read, "03/19/10".)

The claimant's work history after Dr. Hudson rated and released her to "full duty work" on August 6, 2008.

After Dr. Hudson released her to return to full duty work, the claimant returned to Pathfinder for approximately three (3) months, or possibly six (6) months, after which she went to work for Home Care Professionals (Home Care). At Home Care she would also work at facilities like Fox Ridge, where she sometimes was responsible for turning patients in bed. After Home Care, the claimant returned to work at Pathfinder for about a year or so where she worked answering telephone calls and transferring clients. She once again left Pathfinder's employ and went to work at Friendship Community Care (Friendship), where for about one (1) year she cared for a patient for whom she was at times required to change the patient's clothes and turn her every two (2) hours without assistance. The claimant left her job at Friendship to work with Elite Care as an independent

contractor. She worked full-time at Elite Care then, after the COVID-19 pandemic hit, worked about 30-plus hours per week. The claimant's brother had a stroke in 2015 or 2016, and she began caring for him through Elite Care. Her job duties at Elite Care include mopping, making meals, giving medications, and going shopping. A few years ago, the claimant applied for and was awarded social security disability (SSD) benefits. She receives about $1,100 a month in SSD benefits, and she is on Medicare. (T.12-23; 24-30; RX2 at 26).

The claimant's additional medical treatment after Dr. Hudson rated and released her to "full work duty" on August 6, 2008.

On March 9, 2010, the claimant returned to see Dr. Hudson for pain in her right shoulder. Dr. Hudson's clinic notes of this date states: "It is difficult to tell if this [the rotator cuff tear] is due to just atrophy of her muscles or if she has retorn or never healed the tendon." (CX1 at 13; RX1 at 3) (Bracketed material added). Dr. Hudson ordered an MRI without contrast which the claimant underwent on March 15, 2010. The MRI revealed the claimant had a full thickness tear of the entire rotator cuff in her right shoulder. (CX1 at 14; RX1 at 4). Dr. Hudson's clinic notes of March 19, 2010, states: "…it is unlikely that she would do well with a revision rotator cuff repair. I think most likely this again would fail due to the retraction and the fatty atrophy of the muscle." (CX1 at 15; RX1 at 5). When the claimant next saw Dr. Hudson on April 15, 2010, he had a "lengthy discussion" with her and explained "this is probably as good as the shoulder is going to get for her." He reiterated her 11% right upper extremity/7% BAW impairment rating, and the claimant's "permanent work restrictions of limited use of overhead activity…." (CX1 at 16; RX1 at 5).

The claimant's request for additional benefits filed with the Commission February 10, 2020, and most recent medical treatment.

The claimant filed a Form AR-C with the Commission on February 10, 2020, requesting additional medical, indemnity, rehabilitation benefits, and attorney's fees. (RX2 at 31). The claimant

presented herself for treatment to Dr. Phillip Smith at Arkansas on May 14, 2019, and Dr. Smith treated her through May 23, 2019. (CX1 at 17-20). The claimant also treated with Dr. Joel Smith on January 14, 2020. (CX1 at 22-24). It is undisputed the respondent paid some medical benefits related to treatment of the claimant's right shoulder between February 6, 2018 and January 24, 2020 (for treatment rendered on January 14, 2020), which they characterize as inadvertent, or "gratuitous." (RX2 at 10-11; T. 10-11; Respondent's Post-Hearing Brief at 1).

DISCUSSION

The Burden of Proof

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of the evidence. ***Ark. Code Ann***. § 11-9-704(c)(2) (2020 Lexis Replacement). There is no presumption that a claim is compensable, that an injury is job-related, or that a claimant is entitled to benefits. *Crouch Funeral Home v. Crouch,* 262, Ark. 417, 557 S.W.2d 392 (1977); *Okay Processing, Inc. v. Servold*, 265 Ark. 352, 578 S.W.2d 224 (1979). The claimant has the burden of proving by a preponderance of the evidence that she is entitled to benefits. *Stone v. Patel,* 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). In determining whether the claimant has met her burden of proof, the Commission is required to weigh the evidence impartially, without giving the benefit of the doubt to either party. ***Ark. Code Ann.*** § 11-9-704(c)(4); *Gencorp Polymer Products v. Landers,* 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987). The ALJ, the Commission, and the courts shall strictly construe the Act, which also requires them to read and construe the Act in its entirety, and to harmonize its provisions when necessary. *Farmers' Coop. v. Biles,* 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002).

All claims for workers' compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep't of Correc. v. Glover***,** 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Dena Constr. Co. v. Herndon*, 264 Ark. 791, 595 S.W.2d 155 (1979). It is the Commission's exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. *Whaley v. Hardee's,* 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant's or any other witness's testimony but may accept and translate into findings of fact those portions of the testimony it deems believable. *McClain v. Texaco, Inc*., 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); and *Farmers' Coop.*, *supra*. The Commission has the duty to weigh the medical evidence just as it does any other evidence, and to resolve conflicting medical opinions; and its resolution of the medical evidence has the force and effect of a jury verdict. *Williams v. Pro Staff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999).

I. THE CLAIMANT HAS FAILED TO MEET HER BURDEN OF PROOF IN DEMONSTRATING THE FORM AR-C SHE FILED WITH THE COMMISSION ON FEBRUARY 10, 2020, REQUESTING ADDITIONAL MEDICAL, INDEMNITY, VOCATIONAL REHABILITATION BENEFITS, AND ATTORNEY'S FEES, WAS TIMELY FILED WITHIN THE TIME PERIODS REQUIRED BY *ARK. CODE ANN.* SECTION 11-9-702(b)(1). THEREFORE, THIS CLAIM FOR ADDITIONAL BENEFITS IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

Ark. Code Ann. Section 11-9-702(b)(1) (2020 Lexis Replacement) is the statute of limitations governing the filing of a claim for additional benefits. This provision states:

> (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.

Like all statutes of limitation, this provision is intended to limit the time in which a

claimant may file a claim, as the Arkansas Supreme Court has explained:

> The purpose of a statute of limitations is to encourage the prompt filing of claims by allowing no more than a reasonable time within which to make a claim so a defendant is protected from having to defend an action in which the truth-finding process would be impaired by the passage of time.

McEntire v. Malloy, 288 Ark. 582, 586, 707 S.W.2d 773, 776 (1986) (citing, *U.S. v. Kubrick,* 444 U.S. 111 (1979); and *Zeleznick v. U.S.,* 770 F.2d 20 (3rd Cir.1985)). Workers' compensation statutes of limitation are intended to prevent employers from having to try to investigate and defend against stale claims where the evidence involved could be either no longer available or difficult to access. Our supreme court has previously held that the time periods identified in ***Ark. Code Ann.*** Section 11-9-702 "…constitute a reasonable exercise of legislative power as such statutes prevent litigation on claims too old to be successfully investigated and defended." *Hamilton v. Jeffrey Stone Co.*, 25 Ark. App. 66, 71, 752 S.W.2d 288, 290 (Ark. App. 1988). Moreover, the court has stated, "The statute of limitations applies with full force to the most meritorious claims, and the court cannot refuse to give the statute effect merely because it seems to operate harshly in a case involving an obviously meritorious claim." *Miller v. Everett,* 252 Ark. 824, 481 S.W.2d 335 (1972).

Here, as in all workers' compensation cases involving the applicability of a statute of limitations, the claimant has the burden of proving her claim for additional benefits has been timely filed within the time period(s) prescribed by law. *Petit Jean Air Serv. v. Wilson*, 251 Ark. 871, 475 S.W.2d 531 (1972); *St. John* v. *Arkansas Lime Co., (Rangaire Corp.),* 8 Ark. App. 278, 283, 651 S.W.2d 104, 106 (Ark. App. 1983). Based on the applicable law as applied to the undisputed, relevant facts of this case, and for the reasons explained in more detail, *infra*, I have no choice but to find the claimant has failed to meet her burden of proof in demonstrating her request for additional medical treatment and other benefits was timely filed within the time period the Act requires.

As the respondent correctly explains it its brief, in *Stewart v. Arkansas Glass Container*, 2010 Ark. 198, 11, 366 S.W.3d 358, 364 (2010), our supreme court held a request for additional compensation a claimant timely files but does not act upon only tolls the statute of limitations with respect to the specific benefits the claim requests. (Respondent's Post-Hearing Brief at 3-5). In other words, when a claimant timely files a claim for additional medical benefits within the period the Act's statute of limitations mandates, but the claimant does not immediately act upon, or prosecute the claim, this only tolls (i.e., stops) the running of the applicable statute of limitations with respect to the claim for additional medical benefits. Likewise, a timely filed claim for additional indemnity benefits on which a claimant does not act only tolls the statute of limitations with respect to the specifically requested indemnity benefits. Relying primarily on *Stewart*, *supra*, in *Flores v. Walmart Distribution*, 2012 Ark. App. 201, 6–7 (Ark. App. 2012), our court of appeals reiterated this interpretation of the Act's statute of limitations relating to claims for additional compensation.

Likewise, in *Kirk v. Cent. States Mfg., Inc.*, 2018 Ark. App. 78, 10, 540 S.W.3d 714, 719 (Ark. App. 2018), the court made it abundantly clear the statute of limitations on claims for additional benefits can run for one (1) type of benefit even if other benefits are being paid without interruption. In *Kirk*, the appellant (Mr. Kirk) argued that the plain language of the statute which refers to "any additional compensation" does *not* require the last paid compensation to be the same kind(s) of benefit(s) sought for additional compensation. *Kirk v. Cent. States Mfg. Inc.*, 2018 Ark. App. 78, 5, 540 S.W.3d 714, 717 (Ark. App. 2018). In addressing appellant Kirk's "plain language" argument, the court stated:

> Appellant's second argument is that *Flores's* interpretation of the statute of limitations is not strict construction and is therefore contrary to legislative intent. In support of this argument, he asserts that the *Flores* interpretation restricts the statute of limitations against legislative intent, and that *Flores* broadens the statute of limitations leading to absurd results not intended by the legislature. According to appellant, "[i]f the legislature intended to have a distinction between requesting additional medical and additional indemnity, it would have specifically included language stating that an

> additional benefits claim must be for each distinct type of compensation[.]" Appellant asserts that this court has read a different statute of limitations for indemnity and medical benefits into the statute.
>
> Appellant's reading misunderstands the holding in *Flores* as Flores was held to the same one-year-from-the-date-of-the-last-payment-of-compensation statute of limitations given in the statute. Furthermore, the *Flores* court looked to *Stewart v. Arkansas Glass Container* to address the same argument that appellant now makes, namely, that it failed to strictly construe the statute. The *Flores* court noted that among other things, the *Stewart* court also held that Stewart's claim for medical benefits "would have tolled the statute of limitations only with regard to that specific claim and not as to other claims for benefits not requested at that time." The *Stewart* court therefore indicated, even prior to the *Flores* court, that there is a distinction in the statute of limitations for additional medical benefits as opposed to additional indemnity benefits so that the statute of limitations may run on one type of benefit and not the other. Finally, we note that the legislature has yet to amend the statute to correct or overturn *Stewart* or *Flores*, if it saw fit.

Kirk, 2018 Ark. App. 78, 9–10, 540 S.W.3d 714, 718–19 (Bracketed material added). The court of appeals handed-down the *Kirk* decision on January 31, 2018. The court further noted in *dicta* that after Arkansas's appellate courts handed-down both the *Stewart* (decided in 2010) and *Flores* (decided in 2012) decisions, our legislature has not amended or "corrected" the applicable statute of limitations to overturn *Kirk*, although it has had the opportunity to do so every time the General Assembly has been in session. *Id*.

Moreover, specifically as it relates to the facts of this case, *Kirk* discusses the applicability of the statute of limitations in cases where there is/are a "gap(s)" between the dates of the last payment of a specific type of compensation, or benefit(s), and the request for the same type(s) of additional compensation, or benefit(s), as well as where a respondent makes a "gratuitous" compensation/benefit payment(s). The court of appeals held that even if a respondent makes "gratuitous" payments after the statute of limitations has expired, the gratuitous payment(s) do not revive the statute:

> In the case at bar, appellant never filed any request for additional indemnity benefits – whether through the typical Form AR–C form or another method – until

> August 18, 2014, and this request was made after there had been a five-year gap in receipt of indemnity benefits. That gap began and ended a little less than six years and three years, respectively, before the date of appellant's claim for indemnity benefits. The purpose of the statute of limitations in workers' compensation cases is to permit a claimant's injuries to be promptly investigated and treated. The burden of filing a claim for additional benefits within the statute of limitations is upon the claimant. While certain claims may toll the running of the statute of limitations, such claims cannot revive other forms of compensation once the statute has run. This court cannot find that the ALJ erred in finding that appellant's claim for indemnity payments was barred by his failure to raise his claim within the appropriate period of time after Central States ceased paying indemnity benefits nor can it find error in the ALJ's assertion that "gratuitous payment of indemnity benefits does not revive the state of limitations[.]"

(*Kirk*, *supra*) (Bracketed material added).

In this case, the dispositive, relevant facts are as follows. The medical records reveal that after Dr. Hudson released her to return to full duty work with the single permanent restriction of limited overhead use of her right arm, there was a gap in the claimant's medical treatment from September 10, 2010 through January 19, 2012, a period of some 16 months – well over the one (1)-year period within which the Act requires for the filing of a claim for additional compensation. Consequently, pursuant to ***Ark. Code Ann.*** Section 11-9-702(b)(2), *the statute of limitations with respect to the claimant's entitlement to medical treatment ran, or expired, on September 11, 2011*, almost three (3) years after the date of her compensable injury of January 17, 2008, and approximately 16 months after the date of her last medical treatment on September 10, 2010. The medical records further reveal the second gap in the claimant's medical treatment occurred between July 16, 2013 and October 28, 2014, a period of some 15 months – again, a period of well over one (1) year.

The claimant did not file her Form AR-C requesting additional medical treatment and other benefits

with the Commission until February 10, 2020. There is no dispute the respondent last paid medical benefits in January 2020; however, by that time the applicable statute of limitations had already expired on or about September 11, 2011. (In fact, one might argue the statute of limitations had run on two (2) separate occasions, as demonstrated above.) The fact the respondent last paid medical benefits – gratuitously or not – in January 2020 does not, cannot, nor should it be deemed to have resurrected the claimant's claim for additional medical and other benefits – a claim which expired on or about September 11, 2011. *Kirk, supra.*

Furthermore, it is undisputed the respondent last paid indemnity benefits in lump sum January 14, 2009. Again, the claimant did not make her claim for additional medical, indemnity, and vocational rehabilitation benefits, and attorney's fees until she filed the Form AR-C with the Commission on February 10, 2020 – over 12 years after the date of her compensable injury, and 11 years after the date after the last PPD payment. (RX2 at 14-17; 31).

This finding the claimant's claim for additional medical and other benefits is clearly barred by the applicable statute of limitations renders moot the issue of whether the medical treatment in question is related to, or reasonably necessary in light of, her January 17, 2008, compensable right shoulder injury. However, in this regard the following facts should be noted. First, the claimant only partially tore her rotator cuff in the January 2020 incident; but after her surgery – and somewhere between the time she left Pathfinder's employ and she went back to see Dr. Hudson on March 9, 2010 – she sustained a complete tear of her rotator cuff either as the result of "…the [fatty] atrophy of her muscles or…she has retorn or never healed the tendon." (CX1 at 13-16; RX1 at 3-5) (Bracketed material added).

Second, after she left her job at Pathfinder, the claimant went to work as an employee with

Home Health Care Professionals, After Home Care Professionals, Friendship Community Care; and then as an independent contractor with Elite Care providing care for her brother who had suffered a stroke, in addition to drawing SSD benefits in the amount of $1,100 per month. (T.12-23). The fact she had a number of other employers after she left Pathfinder – especially in light of Dr. Hudson's statement in his clinic note of March 9, 2010 – makes it more difficult if not impossible to determine within a preponderance of the evidence whether the new, fully torn rotator cuff was the result of a recurrence of her January 2008 compensable injury at Pathfinder or a new injury or aggravation of her preexisting condition sustained while she was working at one of the four (4) other places she worked after she left Pathfinder.

Third, when the claimant presented herself for treatment to Dr. Smith on May 14, 2019, some eleven (11) years had passed since her January 2008 compensable injury, and almost ten (10) years had elapsed since she last saw her treating orthopedic surgeon, Dr. Hudson, in April 2010. Consequently, she was 12 years older than she was at the time of her January 2008 compensable injury; and there exists no evidence in the record concerning what effect, if any, the current condition of the claimant's right shoulder, if any, was the result simply of the natural aging process. All these facts – as well as the simple passage of an extended period of time – make it difficult if not impossible to relate the claimant's right shoulder condition and complaints to the January 2008 compensable injury at Pathfinder. (CX1 at 16, 17-20).

Therefore, for all the aforementioned reasons, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.

2. The stipulations to which the parties agreed in the Prehearing Order filed October 2, 2020, which they affirmed on the record at the hearing, are hereby accepted as facts.

3. ***Ark. Code Ann.*** Section 11-9-702(b)(1) bars this claim for additional medical, indemnity, vocational rehabilitation benefits, and attorney's fees, which the claimant filed with the Commission on February 10, 2020, via the Form AR-C. The claimant has failed to meet her burden of proof in demonstrating this claim for additional benefits was timely filed "within either one (1) year from the date of the last payment of compensation or within two (2) years from the date of the injury, whichever is greater."

4. There were two (2) gaps in the claimant's medical treatment: the first from September 10, 2010 through January 19, 2012, a period of some 16 months; and the second from July 16, 2013 through October 28, 2014, a period of some 15 months. The respondent last paid PPD benefits on or about January 14, 2009, pursuant to the Commission's approval of the claimant's request for a lump sum payment of PPD benefits. The claimant did not file the subject claim for additional benefits until February 10, 2020, well more than either one (1) year from the date of the last payment of compensation, or two (2) years from the date of her January 17, 2008, compensable injury. The fact the respondent inadvertently and/or gratuitously paid the claimant's January 2020 (and other medical bill(s)) cannot resurrect her claim, which expired long ago on or about September 11, 2011.

5. The claimant's attorney is not entitled to a fee based on these facts.

This claim for additional benefits hereby is denied and dismissed. If the respondents have not already done so, they shall pay the court reporter's invoice within ten (10) days of their receipt of this opinion and order.

IT IS SO ORDERED.

____
Mike Pickens
Administrative Law Judge

MP/mp