

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G807714

PENNEY LANE DOLLARS, EMPLOYEE	CLAIMANT
PARAGOULD SCHOOL DISTRICT SELF-INSURED EMPLOYER	RESPONDENT NO. 1
ARKANSAS SCHOOL BOARDS ASSOCIATION, THIRD-PARTY ADMINISTRATOR	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL, DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED MARCH 10, 2021

Hearing before Administrative Law Judge O. Milton Fine II on February 5, 2021, in Jonesboro, Craighead County, Arkansas.

Claimant represented by Ms. Whitney James, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by Ms. Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

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

STATEMENT OF THE CASE

On February 5, 2021, the above-captioned claim was heard in Jonesboro, Arkansas. A prehearing conference took place on December 16, 2020. A Prehearing Order entered that same day pursuant to the conference was admitted without objection as "Commission Exhibit 1." At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Order.

Stipulations

The parties discussed the stipulations set forth in "Commission Exhibit 1." After amendments at the hearing, they are the following, which I accept:

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1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/self-insured employer/third-party administrator relationship existed on October 31, 2018.
3. Claimant's average weekly wage of \$348.00 entitles her to compensation rates of \$232.00/\$174.00.

Issues

At the hearing, the parties discussed the issues set forth in "Commission Exhibit 1." After amendments at the hearing, the following were litigated:

1. Whether the statute of limitations bars this claim.
2. Whether Claimant sustained a compensable injury to her lower back by specific incident.
3. Whether Claimant is entitled to reasonable and necessary medical treatment.
4. Whether Claimant is entitled to temporary total disability benefits from the day following the injury to a date yet to be determined.
5. Whether Claimant is entitled to a controverted attorney's fee.

All other issues have been reserved.

Contentions

The respective contentions of the parties, following amendment at the hearing, are as follows:

Claimant:

1. On October 31, 2018, Claimant was in the course and scope of her employment as a teacher at Paragould Primary when she slipped on a student's blanket and fell. The Respondents initially accepted the claim and paid some benefits, but eventually denied compensability and refused to provide any further benefits. The Claimant suffered injuries to her back in the fall; and she is still experiencing symptoms of the injury that she did not suffer prior to the work injury.
2. Claimant's claim is not barred by the statute of limitations.
3. All other issues are reserved.

Respondents No. 1:

1. Respondents No. 1 contend that the statute of limitations has run, and that the Claimant is barred from receiving any benefits. The claimant has not filed a new Form AR-C since the order of dismissal was granted. Prior to controverting the claim, the last payment of benefits was on January 7, 2019. The date of injury is October 31, 2018. Accordingly, the statute of limitations ran on October 31, 2020, as this date is greater than one year from the last payment of benefits.
2. Alternatively, if the statute of limitations does not bar this claim, Respondents No. 1 contend that the Claimant did not sustain a compensable injury that is supported by objective medical findings of an injury.

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3. Finally, Respondents No. 1 contend in the alternative that if this claim is not barred by the statute of limitations, and if the Claimant can prove she sustained a compensable injury supported by objective medical findings of an injury, the Claimant has not proven that she is entitled to any additional medical or indemnity benefits, as it has been nearly two years since she sought any treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, 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. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven, by a preponderance of the evidence, that her claim was timely filed. Instead, the evidence preponderates that this claim for additional benefits is barred by the statute of limitations set forth in Ark. Code Ann. §11-9-702(b)(1) (Repl. 2012).
4. Because of the above findings/conclusions, the remaining issues—whether Claimant sustained a compensable injury to her lower back by specific incident and whether she is entitled to reasonable and necessary

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medical treatment, temporary total disability benefits and a controverted attorney's fee—are moot and will not be addressed.

CASE IN CHIEF

Summary of Evidence

The hearing witnesses were Claimant and her husband, Jessie Dollars.

Along with the Prehearing Order discussed above, the exhibits admitted into evidence in this case were “Claimant’s Exhibit 1,” a compilation of her medical records, consisting of seven abstract/index pages and 40 numbered pages thereafter; “Respondents No. 1 Exhibit 1,” non-medical documents, consisting of one index page and 12 numbered pages thereafter.

Without objection, I have incorporated the Commission’s file on this matter in its entirety by reference in order to address the statute of limitations issue. In addition, I have blue-backed to the record the post-hearing briefs of claimant and respondents, both filed on February 26, 2021, and consisting of five and seven pages, respectively.

Adjudication

A. Statute of Limitations

Introduction. Respondents No. 1 have alleged at the outset that this claim is barred by the statute of limitations. Claimant disputes this. Respondents No. 1 offered into evidence portions of the record. This, along with the claim file, which has been incorporated herein by reference, details the history of this claim. Also, at their request, the parties have filed post-hearing briefs on this issue.

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Standards. The evidence before me reflects that Respondents No. 1 initially accepted this claim as compensable, but later controverted it in its entirety. 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 her 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) (Repl. 2012), she 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. The evidence reflects that Respondents No. 1 initially accepted Claimant’s alleged back injury as compensable, and paid medical and temporary total disability benefits pursuant thereto. The last payment of medical benefits occurred on January 7, 2019, while the last payment of indemnity benefits took place on January 14, 2019. On January 24, 2019, Respondents No. 1 informed the Commission that they were controverting the matter in its entirety.

Claimant on February 14, 2019, filed a Form AR-C, alleging that she suffered a compensable back injury on October 31, 2018. Therein, she requested the full range of initial and additional benefits. Respondents No. 1 wrote the Commission on February

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15, 2019, a letter that reads in pertinent part: “Please be advised that we initially accepted this claim and Ms. Dollars has received benefits, we have since denied this claim due to lack of objective findings.”

On August 22, 2019, Respondents No. 1 filed a Motion to Dismiss the claim. Claimant’s co-counsel wrote then-Chief Administrative Law Judge Barbara Webb on September 7, 2019, indicating no objection to a dismissal without prejudice. In an order entered on September 10, 2019, Judge Webb dismissed the claim without prejudice.

Claimant did not file another Form AR-C. Instead, through other co-counsel, she filed a prehearing questionnaire response on October 2, 2020. The response reads in pertinent part:

Issues to be litigated at the hearing: Compensability; Medical Benefits; TTD; all other issues reserved.

Contentions (including affirmative defenses): On 10/31/2018, claimant was in the course and scope of her employment as a teacher at Paragould Primary when she slipped on a student’s blanket and fell. The respondent initially accepted the claim and paid some benefits, but eventually denied compensability and refused to provide any further benefits. The claimant suffered injuries to her back in the fall, and she is still experiencing symptoms of the injury that she did not suffer prior to the work injury. All other issues are reserved.

The file was reassigned to Judge Webb on October 6, 2020. Respondents No. 1 filed a timely prehearing questionnaire response on October 23, 2020. Then on December 16, 2020—prior to the prehearing telephone conference held that same day—Respondents No. 1 filed an amended response that added the defense/issue of the statute of limitations. The case proceeded to a hearing on the issues as outlined above.

Claimant has first argued in her post-hearing brief:

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Respondent[s] No. 1 cannot have it both ways. Respondent[s] No. 1 cannot deny compensability of a claim and then after the two-year statutory period, assert a statute of limitations defense and state that if the claim is found to be compensable, that in the alternative, additional medical benefits are being denied.

However, the above positions are not inconsistent. As discussed more fully *infra*, Claimant had to file her claim by the latter of: (1) two years after the date of injury (or October 31, 2020); or (2) one year after the last payment of compensation (or January 7 or 14, 2020, depending on the type of compensation sought). Consequently, as of the time of the filing of the initial prehearing response by Respondents No. 1, the statute of limitations issue was not yet ripe. It was as of October 31, 2020, so they amended their prehearing response accordingly. This was prior to the first hearing on the claim, so Ark. Code Ann. §11-9-702(e) (Repl. 2012) does not pose a barrier to this defense. As for their denying compensability, Respondents No. 1 have long had this position, as stated *supra*.

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). Once the dismissal of it took place on September 10, 2019, “the claim is considered to have never been filed, and unless a new claim is filed within the statutory period of time allowed by section 11-9-702, the statute of limitations will bar any subsequent claims.” *Dillard v. Benton Cty. Sheriff’s Office*, 87 Ark. App. 379, 192

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S.W.3d 287 (2004). The failure to file a new Form AR-C within the requisite period forms the first basis for the holding that this claim for additional benefits is barred by the statute of limitations, as the Arkansas Supreme Court held in *White Cty. Judge v. Menser*, 2020 Ark. 140, 597 S.W.3d 640.

That said, is there anything else in the evidentiary record that, provided it was filed by October 31, 2020, would comply with the dictates of Ark. Code Ann. §11-9-702(c) (Repl. 2012)? This provision reads unambiguously: “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.”

As the *Menser* Court noted, the Arkansas Workers’ Compensation Act has to be strictly interpreted. See Ark. Code Ann. §11-9-704(c)(3) (Repl. 2012); *Duke v. Regis Hairstylists*, 55 Ark. App. 327, 935 S.W.2d 600 (1996). “Strict construction means narrow construction and requires that nothing be taken as intended that is not clearly expressed.” *Hapney v. Rheem Mfg. Co.*, 341 Ark. 548, 26 S.W.3d 771 (2000). The “plain meaning of the statutory language” must be used. *Wallace v. West Fraser South, Inc.*, 365 Ark. 68, 225 S.W.3d 361 (2006) (citing *Pifer v. Single Source Transp.*, 347 Ark. 851, 69 S.W.3d 1 (2002)). Terms have to be defined in such a way that the scope of Act 796 of 1993 is neither broadened nor narrowed. *Id.*

Claimant’s October 2, 2020 prehearing questionnaire response is the only possible candidate to constitute a claim for additional benefits and toll the running of the limitations period. This document, as quoted above, points out that Respondents No. 1

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“initially accepted the claim and paid some benefits.” In addition, Claimant therein listed as two (2) of the issues to be litigated whether she was entitled to “[t]emporary total disability compensation” and “[m]edical benefits.” But the Supreme Court in *Menser*, *supra*, found that very similar¹ language—memorialized in the administrative law judge’s Prehearing Order—did not comply with the express wording of the Act on this point:

Nowhere in the September 15, 2014 prehearing order does the language specifically request a claim for additional benefits in accordance with section 11-9-702(c). Thus, based on our strict interpretation of section 11-9-702(c), we conclude that the ALJ’s prehearing order shall not be considered a claim for additional compensation.

The case at bar is clearly controlled by the above precedent. Claimant’s questionnaire response does not comport with §11-9-702(c)—as it must—in order to constitute a claim for additional benefits. Accordingly, I am constrained to find that Claimant has not proven, by a preponderance of the evidence, that her claim for additional benefits was timely filed. To the contrary, the evidence preponderates that it is barred by the statute of limitations set out in §11-9-702(b)(1).

B. Remaining Issues

Because of the foregoing, the remaining issues—whether Claimant sustained a compensable injury to her lower back by specific incident and whether she is entitled to reasonable and necessary medical treatment, temporary total disability benefits and a controverted attorney’s fee—are moot and will not be addressed.

¹One stipulation read: “This claim has been controverted in its entirety, even though some benefits have been paid.” Two of the listed issues were “Temporary total disability compensation—dates to be provided” and “Medical benefits.”

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CONCLUSION

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

IT IS SO ORDERED.

Honorable O. Milton Fine II
Chief Administrative Law Judge