

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H006035

WILLIAM DEAN, EMPLOYEE	CLAIMANT
ROCK REGION METRO, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 22, 2021

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE STEVEN R. McNEELY,  
Attorney at Law, Jacksonville, Arkansas.

Respondents represented by the HONORABLE CAROL LOCKARD  
WORLEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed May 5, 2021. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the aforementioned stipulations as fact.
3. This claim for initial benefits of an alleged gradual onset cervical spine/neck injury is barred by the statute of limitations. As such, all other issues have been rendered moot and not discussed herein.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore, we affirm and adopt the May 5, 2021 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

---

SCOTTY DALE DOUTHIT, Chairman

---

CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

After my *de novo* review of the record in this claim, I dissent from the majority opinion, finding that “this claim for initial benefits of an

alleged gradual onset cervical spine/neck injury is barred by the statute of limitations.”

Arkansas Code Annotated §11-9-702 states, in pertinent part:

(1) A claim for compensation for disability on account of injury, other than an occupational disease and occupational infection, shall be barred unless filed with the Workers' Compensation Commission within two (2) years from the date of the compensable injury. ...

The statute of limitations for gradual onset injuries begins to run when the injury becomes apparent to the claimant. *La Z Boy Mfg., Inc. v. Bruner*, 2016 Ark. App. 117, 1 2, 484 S.W.3d 700, 2016 Ark. App. LEXIS 121 (Ark. App. 2016) (citing *Pina v. Wal Mart Stores, Inc.*, 91 Ark. App. 77, 84, 208 S.W.3d 236, 239 40 (2005)); see also *Cottage Cafe, Inc. v. Collette*, 94 Ark. App. 72, 76, 226 S.W.3d 27, 30 (2006). The statute of limitations on the claimant's claim began to run on December 8, 2019, when he reported his injury to his supervisor.

Due to the nature of gradual-onset injuries, the time at which a compensable injury becomes apparent to a claimant is not always clear, as the symptoms typically progress over time. But, under facts similar to this case, when claimants experienced gradually-worsening symptoms over many years and only complained to their employers when the symptoms reached a certain threshold, Arkansas appellate courts have held that the

statute of limitations begins to run when the claimant voices a complaint to his or her employer. The Arkansas Court of Appeals has addressed this fact scenario on at least two separate occasions.

In *Pina*, supra, the court found that the claimant's "injury became apparent at least by the date she reported her symptoms of pain and numbness to her supervisor in October 1999 and she was provided accommodations by her employer." Similarly, in *Brunner*, supra, the Court of Appeals held that despite years of "tingling and numbness" in her hands, the claimant therein did not become aware of her carpal tunnel syndrome until the time when she complained of her symptoms to her supervisor. As in *Pina*, the Court used the time that the claimant reported her injury to a supervisor as the benchmark establishing when the true extent of the claimant's injury became apparent to her, thus causing the statute of limitations to begin running.

The facts of the present case are similar to the aforementioned cases. The evidence reveals that the claimant suffered from left arm pain over the course of several years. The claimant testified that despite his pain, he was able to continue working until December 8, 2019. According to the claimant, on December 8, 2019, the numbness and pain in his left arm were so severe that he was not able to continue operating the control on the streetcar. The claimant's symptoms gradually

progressed over time, but as in *Bruner*, the full extent of the claimant's injury did not become apparent until December 8, 2019, when he complained to his manager about those symptoms.

Given that the statute of limitations began to run on December 8, 2019, the claimant's claim was timely filed on August 26, 2020. Thus, I would find that the statute of limitations did not run.

For the foregoing reason, I dissent from the majority opinion.

---

M. Scott Willhite, Commissioner