

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H205234

TERRY C. GRIFFITH, EMPLOYEE

CLAIMANT

**AUTOZONE, INC.,
EMPLOYER**

RESPONDENT

**XL INSURANCE AMERICA,
CARRIER**

RESPONDENT

OPINION FILED MARCH 17, 2023

Hearing before Administrative Law Judge Steven Porch on March 7, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant Terry C. Griffith is representing himself, *pro se*.

Respondents are represented by Mr. Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 7, 2023, the above-captioned claim was heard in Little Rock, Arkansas. A prehearing conference took place on December 12, 2022. A Prehearing Order was entered that same day pursuant to the conference. The parties have stipulated to 1.) the Arkansas Workers' Compensation Commission having jurisdiction over the claim, 2.) that an employee/employer/carrier relationship existed on March 11, 2013, when claimant sustained a compensable injury in the form of a scalp contusion, and 3.) Respondents accepted that injury as medical-only. There are three issues at the heart of this case. First, has the Claimant sustained compensable injuries to his head, neck, back and shoulder by specific incident? Second, is Claimant entitled to reasonable and necessary medical treatment? Third, has the Claimant filed his claim within the statute of limitations? These issues will be addressed in reverse order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, 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. Claimant has not proven by a preponderance of the evidence that his claim was timely filed. Thus, the Commission finds, and 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).
3. Because of the above findings/conclusions, the remaining issues – 1.) whether the Claimant sustained compensable injuries to his head, neck, back and shoulder by specific incident and 2.) whether Claimant is entitled to reasonable and necessary medical treatment are hereby moot and will not be addressed.

STATUTE OF LIMITATIONS

Facts of Case. The date of injury for this claim occurred on March 11, 2013, where the hood of a motor vehicle collapsed on Claimant, causing injury to his head and back. Respondents initially accepted this claim in March 2013 and paid for Claimant's

medical bills and physical therapy. Claimant was released from medical care on April 17, 2013. Claimant went to physical therapy during his lunch break and did not miss any work. Claimant's initial benefits were purely medical. On July 22, 2022, a little over nine years after his injury, Claimant filed a claim for compensation for his head, neck, shoulder and back, in the form of an AR-C, with the Commission.

The Respondents have alleged at the outset of this claim that it is barred by the statute of limitations. Claimant disputes this. Both Claimant and Respondents have submitted into evidence Claimant's deposition as Joint Exhibit "1." The Claimant also submitted his medical records as Claimant's Exhibit "1" while Respondent submitted Claimant's Joint Petition from a 2020 injury as Respondent's Exhibit "1." I have reviewed and weighed this evidence along with the sworn testimony and argument.

Standards. The evidence before me reflects, as stipulated above, that Respondents 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 his 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), he must prove this by a preponderance of the evidence. The standard "preponderance of the evidence" means the evidence having greater weight or

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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. As stated above, the Respondents initially accepted Claimant's injury as compensable and paid the medical benefits for Claimant's treatment. The last payment of medical benefits was not entered into the record by either side during the hearing. The statute of limitations for additional compensation began to run one year from the date of the last benefit payment or two years from the date of injury, whichever is greater. Ark. Code Ann. §11-9-702(b)(1) (Repl. 2012); *See also*, *Wynne v. Liberty Trailer and Death and Permanent Total Disability Trust Fund*, 2022 Ark. 65, 641 S.W.3d 621 (2022)(holding the statute of limitations on a request for additional benefits commences when the last payment, whether for disability or medical benefits, was made). The evidence is clear the last day of treatment for the Claimant was April 17, 2013. This Court has requested briefs from both sides on March 8, 2023, on the issue of when the last payment of benefits was made by the Respondent regarding the March 11, 2013, injury. Those briefs have been received, blue-backed and made a part of the official record for this case.

The Court now finds, based on the evidence, that the last benefit payment was made on July 9, 2013. Since Claimant has one year from the last medical benefit payment or two years from the date of injury, whichever is greater, to file for additional medical benefits, the Court finds the Claimant had until March 11, 2015, the later date, to file his claim for additional benefits with the Commission. The Court further finds the Claimant did not file his claim within the required statute of limitations period.

Though it should be noted, the Claimant feels it was the Respondent's responsibility to report his injury to the Commission under Ark. Code Ann. §11-9-529 (a & b) (Repl. 2012), this argument is not dispositive of the statute of limitations issue. And even if it were, and I find that it does not affect the statute of limitations issue, the Claimant did not provide any witnesses, such as a fellow employee, supervisor, district manager, or anyone with personal knowledge, to substantiate his claim that he reported his need to management for additional treatment for his injury. But again, what is dispositive of the statute of limitations issue, at this point in the analysis, is when the Claimant filed his claim with the Commission.

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). I find the formal claim for this matter was filed with the Commission on July 22, 2022, over nine years from the date of the injury. I further find the Claimant failed to file a Form AR-C by the March 11, 2015, the statute of limitations deadline, thus forming my basis for finding this claim for additional benefits barred by the statute of limitations.

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 Steven Porch
Administrative Law Judge