

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G404164

KEITH L. HARPER, EMPLOYEE	CLAIMANT
PULASKI COUNTY SPECIAL SCH. DIST., SELF-INSURED EMPLOYER	RESPONDENT
ARK. SCH. BDS. ASSN., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED DECEMBER 21, 2021

Hearing before Administrative Law Judge O. Milton Fine II on October 27, 2021, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Kenneth A. Olsen, Attorney at Law, Bryant, Arkansas..

Respondents represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 27, 2021, the above-captioned claim was heard in Little Rock, Arkansas. A prehearing conference took place on May 17, 2021. The Prehearing Order entered on that date 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

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. With an amendment of the third, and the withdrawal of the fifth, they are the following, which I accept:

HARPER – G404164

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employer/employee/carrier relationship existed at all relevant times, including May 20, 2014, when Claimant sustained a compensable injury to his lower back.
3. Respondents accepted the above injury as compensable and have paid benefits pursuant thereto, including medical and temporary total disability benefits.
4. Claimant's average weekly wage of \$677.50 entitles him to compensation rates of \$452.00/\$339.00.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit

1. With the reservation of the third and fourth issues, the following were litigated:
 1. Whether this claim is barred by the statute of limitations.
 2. Whether Claimant is entitled to additional medical treatment.

All other issues have been reserved.

Contentions

The respective contentions of the parties, following the withdrawal of Respondents' fourth, which pertained to a reserved issue, read as follows:

Claimant:

1. Claimant contends that he is entitled to continuing medical and indemnity benefits herein, and same are controverted by Respondents.

Respondents:

1. Respondents contend that the statute of limitations has run with regard to this matter. A Form AR-4 was filed in this matter on November 9, 2016, closing Claimant's workers' compensation claim. No benefits were paid subsequent to that. The statute of limitations ran two (2) years from the date of injury of one (1) year from the last payment of benefits, whichever is later. Regardless of which date is used, the statute has run.
2. The Form AR-C was not filed in this matter until December 19, 2019.
3. The medical evidence does not support Claimant's entitlement to additional 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 Claimant and to observe his 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 this claim for additional benefits was timely filed.

4. The evidence preponderates that this claim for additional benefits is barred by the statute of limitations set out in Ark. Code Ann. § 11-9-702(b)(1) (Repl. 2012).
5. Because of the above finding, the remaining issue—whether Claimant is entitled to additional medical treatment—is moot and will not be addressed.

CASE IN CHIEF

Summary of Evidence

Claimant was the sole witness.

In addition to the prehearing order discussed above, the exhibits admitted into evidence in this case were Joint Exhibit 1, a compilation of Claimant’s medical records, consisting of one index page and 19 numbered pages thereafter; and Respondents’ Exhibit 1, non-medical records, consisting of one index page and 16 numbered pages thereafter. Also, the November 9, 2021, email brief of Respondents, consisting of one page, has been blue-backed to the record.

A. Statute of Limitations

Introduction. As the parties have stipulated, Claimant sustained a compensable injury to his lower back on May 20, 2014. Respondents accepted the injury as compensable and paid benefits pursuant thereto. In this proceeding, Claimant is asking that he be awarded additional medical treatment. Respondents, in turn, have alleged that this claim for additional benefits is barred by the statute of limitations.

Standards. 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 payment of compensation for any benefit—whether indemnity or medical in nature—constitutes the “payment of compensation” under this provision, and thus tolls the running of the statute of limitations for the filing of a claim for additional compensation. *Cosner v. C&J Farms & Labels Co.*, 2021 Ark. App. 453, 2021 Ark. App. LEXIS 473; *Wynne v. Liberty Trailer*, 2021 Ark. App. 374, 2021 Ark. App. LEXIS 394, *pet. for rev. granted*, 2021 Ark. ___, ___ S.W.3d ___. The one-year period begins to run from the last payment of compensation. *See Wynne, supra.* With respect to medical benefits, the date of payment is deemed to be the date that medical services were provided. *Plante v. Tyson Foods*, 319 Ark. 126, 890 S.W.2d 253 (1994).

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 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).

A claimant’s testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness’

HARPER – G404164

credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Evidence. Claimant, who is 51 years old and a high school graduate, worked for Respondent Pulaski County Special School District as both a bus driver and a janitor. He last worked there on May 14, 2014, when the following took place:

I was driving the bus and a utility truck, I forgot the name of the company, hit me from behind. I was at the stop sign, and he wasn't paying attention to what he was doing. He was looking for an address, and I was at the stop sign, and he hit me from behind and I pulled over. No kids was involved. I pulled over, and call my supervisor, and she came out. The police came out to cite him for the ticket . . . I finished my route to pick up the kids, and when I got back and everything, I let [the supervisor] know that, you know, my back was hurting

He first treated at Concentra Clinic and underwent an MRI. Respondents then had him treat with Dr. Brent Sprinkle. According to Claimant, Sprinkle's treatment consisted only of testing and medication. Claimant saw him for four to six months. Thereafter, one of the doctor's colleagues released him. The adjustor informed him that he could return to work because there was nothing wrong with him.

The following exchange took place:

Q. Has there ever been a period of time since [the above-described conversation with the adjustor] that you have received workers' compensation benefits or medical benefits?

HARPER – G404164

A. No, sir.

When his pain did not improve, and because Respondents controverted any further treatment, Claimant had his personal physician furnish him with a referral. He used this to go to Dr. Kevin Collins. Collins gave him pain management, which consisted of medication and epidural steroid injections. From there, he went to Dr. James Adametz, a neurosurgeon. Adametz eventually performed a diskectomy on him. He has seen Adametz 10 to 12 times. His testimony was that Adametz's treatment was paid for by his "personal insurance and QualChoice." Since his surgery, Dr. Collins has referred him to Dr. Angela Lovett for more pain management. His last visit with Lovett was via a telemedicine appointment in July 2021. Claimant stated that presently, his treatment is being covered by Medicaid.

On cross-examination, the following exchange took place:

Q. And your claim that's pending that after the school district stopped paying for your benefits, that's when you started treating with Dr. Collins and Adametz and Lovett, is that right?

A. Yes, ma'am.

Q. You told us today that you used QualChoice, is that right?

A. Yes. Well, when I had to pay for my own insurance, before I got approved for disability, I had to pay for QualChoice, the insurance through the Obama Care, yes, ma'am.

...

Q. And you returned for an appointment earlier, which doctor you saw that was covered by workers' comp after Dr. Sprinkle, that was with Dr. [Jared] Seale, does that sound right?

A. I never knew his name.

- Q. Okay. It looks like he released you November 19th of 2014?
- A. Yes, ma'am.
- Q. And you would agree with me that no benefits were paid by workers' comp after December of '14, is that right?
- A. No, ma'am, it shouldn't have been. No, ma'am. No, ma'am. I can't—like I said, I have to go back. I don't think there was any benefits paid, because they send me back to work and so they wasn't paying anything at that point. So no, and they was giving me the last check, but I can't remember if they just gave me one more check. I don't—I can't say for sure.
- Q. Okay. The printout we have shows that benefits were paid from May of '14 through December 23rd of '14, does that sound about right?
- A. Yes, that's about right, yes, ma'am.

Claimant underwent a functional capacity evaluation in 2014.

Shown the Form AR-C that is part of Respondents' Exhibit 1, Claimant agreed that he signed and filed it with the Commission in December 2019.

A review of the documents in evidence show that they are in line with the testimony. Dr. Seale released Claimant from treatment on November 19, 2014, and assigned him a zero percent (0%) impairment rating. The benefits payout history reflects that Claimant was last paid temporary total disability benefits on November 6, 2014. The last treatment that Respondents covered was his managed care services by Novare Texas, LLC, which ended on December 23, 2014. Claimant's Form AR-C was filed with the Commission on December 19, 2019.

Discussion. The evidence adduced at the hearing and discussed above clearly shows that this claim abridges the statute of limitations contained in § 11-9-702(b)(1). The two-year period following the occurrence of the lumbar injury ended on May 20, 2016—which is later than one year after the last date that benefits were paid (which in this case was the provision of managed care on December 23, 2014, which under *Wynne* and *Cosner, supra*, came after the last payment of temporary total disability benefits), or November 19, 2015. Thus, the May 20, 2016, date controls here.

The filing of the Form AR-C on December 19, 2019—over three years after the expiration of the limitations period on May 20, 2016—means that the claim is time-barred. Claimant has not proven that his claim for additional benefits was timely filed. To the contrary, the evidence preponderates that the claim should be dismissed for violating the statute of limitations.

B. Remaining Issue

Because of the above finding, the remaining issue—whether Claimant is entitled to additional medical treatment—is moot and will not be addressed.

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.

Hon. O. Milton Fine II
Chief Administrative Law Judge