

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H104834**

KELLI S. HELLUMS, Employee	CLAIMANT
AREA AGENCY ON AGING WESTERN ARKANSAS, Employer	RESPONDENT
RISK MANAGEMENT RESOURCES, Carrier	RESPONDENT

OPINION FILED **APRIL 6, 2023**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MATTHEW J. KETCHAM, Attorney, Fort Smith, Arkansas.

Respondents represented by MELISSA WOOD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 5, 2023, a prehearing conference was conducted with the attorneys for the parties. However, a prehearing Order was not entered. Rather than schedule this matter for a hearing, the parties advised that a stipulated record should be submitted, along with a brief from each party setting forth its position on how the law applies to the stipulated facts. The stipulated facts and the briefs of the parties are blue backed and made a part of the record.

The stipulated facts of this case are as follows:

1. The employer-employee relationship existed on 8/6/20 when claimant sustained a compensable injury to her lower back.
2. The claim was accepted as a medical-only claim.
3. Claimant's average weekly wage of \$402.11 would entitle her to TTD/PPD benefits in the amount of \$268/\$201 per week.
4. The parties reached a settlement when claimant was unrepresented, and paperwork was submitted to the Commission on 6/10/21.

Hellums-H104834

5. Matt Ketcham notified the adjuster of his representation on 6/11/21 and later notified the Commission of his appearance on 10/14/21.

6. A joint petition hearing never took place, and the file was returned to general files on 1/26/22.

7. Claimant's counsel was notified by letter dated 8/8/22 that the adjuster was closing her file and was taking the position that the statute of limitations had run.

8. Claimant filed a Form C with the Commission on 8/8/22, and no previous filings were made before that date.

9. The parties have no objection to the incorporation of the Commission's file by reference, if needed.

The issues presented to me on this stipulated record were:

- (1) Had the statute of limitation expired before claimant filed a Form C for benefits; and
- (2) Had the parties reached a binding agreement to settle this matter by joint petition before the statute of limitations had expired?

All other issues were reserved by the parties.

From a review of the record as a whole, including the stipulated facts, the briefs of the parties, and other matters properly before the Commission, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations submitted by the parties are hereby accepted as fact.
2. The Form C filed by claimant was timely filed.
3. There is no binding contract to resolve this matter by joint petition.

FACTUAL BACKGROUND

Attached to her brief, claimant provided the email correspondence her attorney had with counsel for the respondents. A cursory glance through those emails revealed that some of those from respondent contained a confidentiality notice. While the Commission is not bound by technical or statutory rules of evidence or by technical or formal rules of procedure, Ark. Code Ann. § 11-9-705(a), *Stoker v. Thomas Randal Fowler, Inc.*, 2017 Ark. App. 594, I believed it to be unfair to respondent's counsel to have correspondence she deemed confidential included in claimant's submission, and therefore did not consider those emails so designated in deciding this matter.

ADJUDICATION

A. Was claimant's Form C filed after the statute of limitations had run?

Claimant's date of injury was August 6, 2020, which would make the last date she could file for benefits August 6, 2022. Her Form C was filed on August 8, 2022. While not included in the stipulations, I have taken judicial notice that August 6, 2022, was a Saturday and August 8, 2022, was a Monday, see *Buxton v. Nashville*, 132 Ark. 511, 201 S.W. 512, (1918). As such, this matter is governed by the decision of the Full Commission in *Bundgard v. Wal-Mart*, 2017 AR Wrk. Comp. LEXIS 104:

In the present claim, the claimant's two-year statutory period for filing a claim ended on a Sunday. Because the claimant could not file her claim on Sunday, she waited until the next business day to file her claim. Consequently, the Administrative Law Judge found that the claimant's statute of limitations for filing her claim had run, and that her claim was barred by the provisions of Ark. Code Ann. § 11-9-702 . However, Ark. Code Ann. § 11-9-702 does not address computation of time when the two-year statute of limitations deadline falls on a weekend or holiday. Furthermore, strict construction does not mandate a literal interpretation that leads to absurd results where an alternative interpretation better effects the statute's purpose. *Robertson v. Pork Group, Inc.*, 2011 Ark. App. 448, 384 S.W.3d 639 (2011).

In a previous claim, the Court applied Rule 6 of the Arkansas Rules of Civil Procedure in computing time to file an appeal. See, *Ashcraft v. Quimby*, 2 Ark. App. 174, 617 S.W.2d 390 (1981). Taking into consideration the time

Hellums-H104834

for mailing a pleading as contained in Rule 6, the court found that the claimant had filed a timely appeal. *Id.*

In the absence of express statutory language addressing computation of time when the two-year statutory deadline for filing a claim fall on a weekend or holiday, combined with the sound guidance set forth in *Asbcraft v. Quimby, supra*, for us to disallow the claimant in the present claim the liberty of filing her workers' compensation claim on the Monday following her statutory deadline, would lead to an absurd result. See *Robertson v. Pork Group, Inc., supra*. Therefore, we find that the claimant's claim is not barred by the two-year statute of limitations set forth in Ark. Code Ann. § 11-9-702.

Since the Full Commission was satisfied that the logic behind Rule 6 of the Arkansas Rules of Civil Procedure should be applied to Ark. Code Ann. § 11-9-702, and since the legislature has not seen fit to change the wording of that statute in the years since that decision, I am satisfied that the Form C filed on August 8, 2022 was timely.

B. Did the parties have a binding contract to resolve this matter by joint petition?

In reviewing the correspondence that was not labeled confidential, I saw numerous requests from respondents' counsel to claimant's attorney prior to August 6, 2022, asking for status updates and wondering if the matter could be set for the joint petition on the paperwork that was submitted on June 10, 2021. On August 4, 2022, two days before the statute of limitations expired, Ms. Wood sent a letter to Mr. Ketcham, advising that the original offer to settle was still available. After August 6, 2022, respondent took the position that the statute of limitations barred any further action on this matter, and no money was going to be paid to claimant to resolve this matter by joint petition.

On September 23, 2022, Mr. Ketcham sent this email to Ms. Wood, which reads, in pertinent part:

“When we last spoke, I had indicated to you that my client would accept the offer previously extended and that had been on the table without revocation. You then indicated that you would have to check with your client. As I see it, the offer was accepted.”

Within four minutes on the same day, Ms. Wood responded:

“I sent a letter on 8/8, informing you that I was closing my file and that the adjuster was filing the Form 4 because the statute of limitations had run. It was taken off the table at that time.”

While the letter of August 8, 2022, was not included in the exhibits attached to either brief, I am satisfied that Ms. Wood sent it as she said in her email; there was no response from Mr. Ketcham protesting that he had not received it included in his exhibits to his brief.

Claimant’s position that there was a contract to settle fails for two reasons. First, I have no evidence that the offer was accepted before August 8, 2022. Mr. Ketcham’s email does not identify when the conversation he referred to in his September 23, 2022, email took place. Mr. Ketcham filed a Form C on claimant’s behalf on August 8, 2022, instead of requesting the joint petition be set for a hearing. I thus conclude that the offer had not been accepted at the time the Form C was filed, and the conversation took place after August 8, 2022. As I believe Ms. Wood communicated on August 8, 2022, that she had closed her file because she believed the statute of limitations had expired, that would serve as a revocation of the offer.

Second, unlike civil litigation in the circuit and district courts, an agreement between the parties to settle a matter is contingent upon the joint petition being approved by an administrative law judge. A claimant is advised at the hearing that he or she can decline to complete the proposed settlement at any time before the order is signed. At the hearing, the judge must determine not only if the settlement is in the best interest of the claimant, but also in the respondent’s best interest. Claimant cited no authority to support its contention that a binding contract to settle this matter existed; respondents’ reliance on *Odom v. Tosco Corp.*, 12 Ark. App. 196 (1984) is appropriate under these circumstances.

Hellums-H104834

ORDER

Claimant's Form C which was filed on August 8, 2022 was timely, and therefore claimant is not barred from pursuing a claim for benefits.

The parties do not have a binding agreement to settle this matter, as workers' compensation claims cannot be settled without a hearing on a proposed joint petition, and because the greater weight of evidence supports the conclusion that the offer was withdrawn before claimant attempted to accept it.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE