

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F708803

BERNICE D. HOWARD, Employee

CLAIMANT

CONAGRA FOODS , Employer

RESPONDENT

SEDGWICK CLAIMS MANAGEMENT SERVICES, Carrier/TPA

RESPONDENT

OPINION FILED JULY 29, 2021

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 6, 2021, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on April 7, 2021, and a Pre-Hearing Order was filed on that same date. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury on December 18, 2006 to her right arm.
4. The claimant is entitled to a weekly compensation rate of \$314.00 for temporary total disability and \$236.00 for permanent partial disability.
5. The claimant was released with a 31% right upper extremity rating on September 15, 2008.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether claimant is entitled to additional medical benefits.
2. Respondent raises the statute of limitations defense.

Claimant's contentions are:

"The claimant contends that it has always been a fight to get my medication. They would not put I on our refill until I file for a hearing. I have been lied to by company nurse from the beginning. I need some help with Conagra."

Respondents' contentions are:

"Respondents contend that the statute of limitations has run with regard to this matter. No benefits were paid, and no medical treatment was received between 5/28/14 and 1/10/17. The claimant filed a Form C on 8/20/07. The only issue addressed at that time was a change of physician. A second Form C was filed on 8/10/20 seeking all available benefits under the Act. It is respondents' position that the second Form AR-C was not timely in order to protect the statute of limitations. Alternatively, if it is determined that the statute of limitations has not run, it is respondents' position that all appropriate benefits have been and are continuing to be paid with regard to this matter."

The claimant in this matter is a 75-year-old female who sustained a compensable right arm injury on December 18, 2006. The claimant underwent right cubital tunnel release in 2007 due to her compensable December 18, 2006 right arm injury; more specifically, due to an ulnar nerve injury. The claimant was seen by Dr. Jeanine Andersson at Arkansas Specialty Orthopedics on September 15, 2008.

Following is a portion of the medical record from that visit:

Ms. Howard comes in today for followup from her FCE. The patient FCE came back demonstrating that she is able to work at a medium work classification. She gave a reliable effort with 49/49 consistent efforts.

Physical Exam

The patient's exam is essentially unchanged. She continues to have decreased sensation over the tips of her fingers. She is able to fully extend her fingers and make a tight fist. She has a positive Froment's sign. She has mild clawing of the 4th and 5th fingers.

Assessment

1. Severe cubital tunnel syndrome, status post anterior transposition, with permanent deficits.

Plan

1. The patient is now at maximum medical improvement.
2. She will be given a full and complete release back to work today.
3. She would like to try to go back to full duty at work if possible.
4. If not, she will call my office and we can place permanent work restrictions on her based upon her FCE.
5. She will be sent to therapy for her final impairment rating, which will be dictated in a separate dictation.
6. Patient agrees and understands the treatment plan as outlined and all questions were answered.

On that same day, an impairment rating was issued for the claimant. The claimant was found to have total impairment of the right upper extremity of 31%. That rating was also issued by Dr. Andersson.

On January 26, 2018, the claimant was again seen by Dr. Andersson. Following is a portion of the medical report from that visit:

History

Follow-up. She had a previous cubital tunnel release in 2007 due to ulnar nerve injury. She has been treated with Lyrica 150 mg b.i.d. which seems to control some of her symptoms. She states that she persistently abducted finger which sometimes bothers her. On the whole she states her condition is stable.

She continues to complain of cold intolerance.

Plan

#1 at this point I anticipate that patient will likely be on 150 mg bid Lyrica long-term. Attempts in the past to wean her have been unsuccessful and she has become painful. I therefore recommend this lifelong/long-term.

We discussed correcting surgically her Wartenberg's sign of the small finger if it ever becomes symptomatic. I think the likelihood of this is extremely remote however.

#2 I do not need to see this patient back unless she develops any new symptoms. The patient agrees and understands with the treatment plan. All conversations were had with patient today

in layman's terms. All questions were answered to the patient's satisfaction.

#3 the patient has no further impairment

#4 the patient is a maximal medical improvement

The claimant has asked the Commission to determine whether she is entitled to additional medical benefits regarding her compensable December 18, 2006 right arm injury. The claimant, representing herself at the hearing, gave the following direction examination testimony in a narrative form:

THE CLAIMANT: Well, all I am asking for is to make sure I am - - if I have to have another surgery on this hand, I want to make sure it's covered. I don't see why Medicare or my husband or myself would have to pay for something that was caused due to the injury at work.

And it's just - - since I filed for the extra benefits because of my hand, statutes were never mentioned by anybody at Sedgwick and as soon as I filed that paper, everything stopped. They stopped paying the doctor. They stopped my medication. And Dr. Roman is where they sent me when Dr. Anderson got sick and couldn't. And Dr. Anderson is a - - Dr. Anderson is the best doctor there is in Arkansas for the forearm is what I was told by the workmen's compensation. And Dr. Roman is anesthesiologist. He is not a nerve doctor. He has gotten me off of the Lyrica, on to something different, which has helped. But since they have cut the medication off, I still have problems. My finger goes cold like it's been in a freezer. And it's also affecting my ring finger. This whole here (indicating) is ice. It's numb. There is nothing there. And I just wanted to make sure I get it taken care of, if there is - - you know, if I need that surgery, I want it taken care of. I would like to have it taken care of is what I mean.

The claimant was asked on cross-examination about the surgery discussed in the above direct testimony as follows:

Q Okay. Now, you've mentioned the main reason you are here is you want to be covered for a surgery that Dr. Anderson has mentioned in this report that you have submitted here today.

A Yes.

Q But to be clear, there is no surgical recommendation on the table right now where they are trying to schedule you for a surgery?

A No.

Q And when the Judge reads that record, Dr. Anderson actually says the likelihood of your needing the surgery is extremely remote. Did she discuss that with you?

A Yes, she did.

Q Okay. And in that same record, she says she doesn't need to see you back. You are at maximum medical improvement, you planed out, and that there is no further impairment that needs to be assigned. You don't disagree with what is in the record you have introduced, do you?

A No.

The respondent has raised the statute of limitations as a defense in this matter. Upon review of the Commission's file it appears two Form AR-Cs have been filed by the claimant, one on August 24, 2007 that requested only a change of physician, and another filed on August 10, 2020 in which all of the boxes that allow for the request of benefits were indicated.

The respondent introduced two documents that are found at Respondent's Exhibit 2. Pages 1 and 2 of Respondent's Exhibit 2 is a medical bill printout from the respondent carrier/TPA regarding the claimant. From my review of that document it appears that from May 28, 2014 until sometime in January of 2017 the respondent did not provide the claimant with any medical benefits for her compensable right arm injury. Pages 3 and 4 of Respondent's Exhibit 2 consist of an indemnity printout from the respondent carrier/TPA regarding the claimant. From my review of that document, it appears that the claimant was last paid indemnity benefits by the respondent on March 22, 2010.

The claimant was asked on cross examination about the printout and the gap in benefits paid on her behalf or to her as follows:

Q Ma'am, I have introduced the printout of the benefits that have been paid in your claim. Have you had a chance to look at it?

A I just looked at it.

Q Okay. And the printout shows there is a gap in payment between May 28th of 2014 and January 10th of 2017, so about two years and nine months where you weren't getting medical or off-work pay.

Since the only document you have introduced is this one report from Dr. Anderson, I take it you don't have any documentary evidence that would contradict that printout that showed what they paid you and when paid it?

A All I know is that that was my short-term disability payment. That is what Sedgwick told me. I'm sorry, I can't say that.

Q Well, actually, you can. But the important thing for me is that gap, that two-year-and-nine-month gap where they don't show any payments to you, no checks went to you or any doctors. You don't have anything to dispute that that gap exists; do you?

A No, I don't.

Q Okay. Your rating was issued back in 2008; right?

A Right.

Q So about 2014 that would have been paid out; right? You weren't getting a check from them in 2014?

A No.

Q You were just getting medical treatment once in a while; right?

A Right.

Q You understand that a claim under the Arkansas Workers' Comp Act, a claim is barred if it is not filed within two years of the original injury date or one year of the last payment of benefits. Have you had somebody explain that to you?

A No.

Q Okay. Well, your original injury date is 2006; right?

A Right.

Q So by 2015, we are clearly more than two years from 2006. You will agree with that; right?

A Right.

Q And if no benefits were paid in '15 or '16, that is clearly a year from that last payment in '14; isn't it?

A Correct.

Q Before they picked up and started paying some stuff again; Right?

A Yes. That was because Dr. Anderson saying that she didn't want - -

MR. PARRISH: Object to hearsay, Your Honor.

THE CLAIMANT: I'm sorry, I can't say that.

Q [BY MR. PARRISH]: I am simply looking at the calendar and doing the math. You will agree it is more than two years from your injury date and more than one year from the last time they paid you in '14; right?

A Right.

The claimant's compensable injury occurred on December 18, 2006. Medical benefits were paid to the claimant or on behalf of the claimant on multiple occasions until the gap in the payment of medical treatment occurs from May 28, 2014 until sometime in January of 2017. The claimant filed a Form AR-C for all available benefits, including additional medical benefits, on August 10, 2020. The August 10, 2020 claim for benefits is more than one year from the last payment of compensation and more than two years from the date of injury. The respondent did again begin to pay medical benefits in January of 2017, well after the statute of limitations had run on the claimant's medical benefits. However, that gratuitous payment of medical benefits in January of 2017 does not revive the statute of limitations for the claimant. The claimant's entitlement to additional medical benefits in this matter is barred by the Statute of Limitations.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and

to observe her demeanor, 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 agreed to by the parties at the pre-hearing conference conducted on April 7, 2021, and contained in a Pre-hearing Order filed that same date, are hereby accepted as fact.
2. The Statute of Limitations has run in this matter regarding medical benefits for the claimant.
3. The claimant has failed to prove by a preponderance of the evidence that she is entitled to any additional medical benefits in this matter.

ORDER

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**