

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. G010654**

**EVER JAQUEZ, EMPLOYEE**

**CLAIMANT**

**JAQUEZ MASONARY, EMPLOYER**

**RESPONDENT**

**AUTO OWNERS INSURANCE COMPANY  
CARRIER/TPA**

**RESPONDENT**

**OPINION FILED DECEMBER 21, 2022**

Hearing before Administrative Law Judge, James D. Kennedy, on the 22<sup>nd</sup> day of November, 2022, in Little Rock, Pulaski County, Arkansas.

Claimant is *Pro Se*.

Respondents are represented by Mr. Jeremy Swearingen, Attorney-at-Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on the 22<sup>nd</sup> day of November, 2022, to determine the issue of additional medical benefits. The claimant contends that he is entitled to additional medical treatment in regard to an injury that occurred on August 6, 2010. Respondents contend that the claimant is in an employee/self-insured employer relationship and that they accepted the claimant's left upper extremity injury claim as compensable and paid all due medical and indemnity benefits. The claimant was declared by his former treating specialist, Dr. Michael Moore, to have reached maximum medical improvement on July 7, 2011. Dr. Moore assigned the claimant a sixteen percent (16%) left upper extremity impairment rating which respondents paid in full, and respondent's last payment of indemnity was permanent partial disability which was paid on April 5, 2017. The respondent's last payment of medical treatment for the claimant occurred on July 29,

2020, and the respondents have controverted the claimant's claim for additional medical benefits and have raised the statute of limitations as a defense.

A copy of the Prehearing Order was filed September 27, 2022, and was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and that an employer/employee relationship existed on August 6, 2010, and at all times relevant hereto. The claimant earned an average weekly wage of \$1,100.00, sufficient for temporary total disability/permanent partial disability rates of \$562.00/\$422.00 respectively. The respondents accepted the claimant's left upper extremity injury claim as compensable and paid all due medical and indemnity benefits. The claimant was declared by his former treating specialist, Dr. Moore, to have reached maximum medical improvement on July 7, 2011. Dr. Moore assigned the claimant a sixteen percent (16%) left upper extremity impairment rating which respondent paid in full. Respondent's last payment of indemnity permanent partial disability was paid on April 5, 2017, and the respondent's last payment of medical was for treatment the claimant incurred July 29, 2020.

The parties' responses to the prehearing questionnaire are set out and made a part of the record without objection. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witness, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. That an employer/employee relationship existed on August 6, 2010, and at all times relevant hereto.
3. The claimant earned an average weekly wage of \$1,100.00 sufficient for temporary total disability/permanent partial disability rates of \$562.00/\$422.00 per week, respectively.
4. Respondents accepted the claimant's left upper extremity injury claim as compensable and paid all due medical and indemnity benefits.
5. The claimant was declared by his former treating specialist, Dr. Moore, to have reached maximum medical improvement on July 7, 2011.
6. That Dr. Moore assigned the claimant a sixteen percent (16%) left upper extremity impairment rating which the respondent has paid in full.
7. Respondents last payment of indemnity was permanent partial disability paid on April 5, 2017.
8. Respondents last payment of medical was for treatment the claimant incurred July 29, 2020.
9. That the claimant's claim for additional medical benefits is barred by the applicable statute of limitations, and consequently the claimant has failed to satisfy the required burden of proof.
10. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

### **REVIEW OF TESTIMONY AND EVIDENCE**

The claimant, Ever Jaquez, the only witness to testify, stated that the respondents had paid all of his bills, and have done everything that he expected. His doctor told him that he might need further treatment on his elbow because it was not working 100%, so that was the only issue that he was asking for. "I know that they've got a thing that if you don't visit the doctor for a year then you're out, but I try to get appointments and they were waiting for them to approve them, so that took longer and longer and longer, so it went over the year, or over a year-and-a-half, and then after that we started calling them and they said it was already over a year so I couldn't never get an appointment." "I've did it

for 10 years, you know. I went to the doctor yearly for 10 years, so I wasn't going to let this one year go over, because the pain in my arm and issues on the arm was reminding me constantly, so I was trying to get the appointment. I could never get it. And that's the only reason we're here, because I couldn't never get an appointment, so the year went over, and that's why we're here." (Tr.p.7)

Under cross-examination, the claimant admitted that he believed that the last medical treatment he had received in regard to the left elbow injury was July 29, 2020, when he saw Dr. Brian Norton, and those medical records were submitted as part of the claimant's evidence. (Tr.p.8) The claimant again reiterated that he had been seeking yearly treatment for over ten (10) years. He stated the insurance would not approve his visit to the doctor this last time. (Tr.p.9) He also admitted that he did not make a claim with the Workers' Compensation Commission or make a hearing request before the deadline passed. (Tr.p.10) The claimant also admitted that he had not had any treatment on his elbow since his last visit with Dr. Norton. (Tr.p.11)

The claimant submitted one hundred fifty-eight (158) pages of medical records that were not indexed and are records primarily in regard to the injury and treatment back in 2010. (Cl.Ex.p.1)

The respondents submitted an affidavit of Tara Yarbrough that provided an indemnity payout record and medical payout record and which consisted of thirteen (13) pages. The records provide that the last indemnity payment was on April 18, 2019, and the last medical payment expense was incurred on July 29, 2020, with the payment made on or about August 18, 2020. (Resp.Ex.p.1)

## **DISCUSSION AND ADJUDICATION OF ISSUES**

In determining whether the claimant has sustained his burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. §11-9-704. *Wade v. Mr. Cavananugh's*, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. *Weldon v. Pierce Brothers Construction Co.*, 54 Ark. App. 344, 925 S.W.2d 179 (1996).

After reviewing the testimony and the relevant and applicable documents that were introduced into evidence in this matter, it is clear the claimant was aware that he needed to seek treatment or at least a review of his work-related injury yearly, in order to keep his claim alive. He had diligently followed and satisfied the one-year statute of limitations for approximately ten (10) years. He was unable to make an appointment and obtain treatment this last time, and the one-year time period ran, after multiple attempts to obtain an appointment. He did not ask for a hearing with the Commission or file any type of claim or pleading with the Commission until well over a year after his last visit to the doctor in regard to his injury.

The one-year statute of limitations period in Ark. Code Ann. §11-9-702(b)(1) begins to run from the last payment of compensation, which the Supreme Court of Arkansas has held means from the date of the last reimbursement of medical services. *Nabholz Construction Corp. v. White*, 2015 Ark. App. 102; *Plants v. Tyson Foods, Inc.*, 319 Ark. 126, 890 S.W.2d 253 (1994) Here the claimant and respondents agreed that the last medical treatment in regard to the elbow and the work-related injury occurred at the end of July in 2020.

Here, based upon the evidence and testimony presented, there is no alternative but to find that the claimant's request for additional medical in this matter involving his work-related injury of the left upper extremity is barred by the applicable statute of limitations and that consequently, the claimant has failed to satisfy the required burden of proof for additional medical treatment. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

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JAMES D. KENNEDY  
Administrative Law Judge