

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H206949

GLEND A LURRY, CLAIMANT
EMPLOYEE

COCA-COLA CONSOLIDATED, INC., RESPONDENT
EMPLOYER

INDEMNITY INSURANCE COMPANY OF RESPONDENT
NORTH AMERICA, INSURANCE CARRIER/TPA

OPINION FILED MARCH 5, 2025

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant is *Pro Se*.

Respondents represented by the HONORABLE RICK BEHRING, JR.,
Attorney at Law, Little Rock, Arkansas.

ORDER

The claimant has filed a "Motion for Reconsideration for Glenda Lurry." The Full Commission denies the motion. The parties stipulated that the claimant "sustained a compensable injury to her lower back" on July 7, 2022. The parties stipulated that the respondents "accepted this claim as a medical-only one and paid benefits pursuant thereto."

A pre-hearing order was filed on August 28, 2023. The claimant contended that she was "entitled to additional benefits in connection with her stipulated compensable lower back injury." The respondents contended, among other things, that they had "paid for all reasonable and necessary medical treatment." The respondents contended that they were not responsible for any temporary total disability benefits.

After a hearing, an administrative law judge filed an opinion on January 5, 2024. The administrative law judge found that the claimant did not prove she was entitled to additional treatment, and that the claimant did not prove she was entitled to temporary total disability benefits. The claimant filed a timely notice of appeal to the Full Commission.

The Full Commission filed an opinion on September 19, 2024. A majority of the Full Commission affirmed and adopted the administrative law judge's decision. The Full Commission's opinion was sent to the claimant on September 19, 2024 by "CERTIFIED MAIL – RETURN RECEIPT REQUESTED." On October 11, 2024, the United States Postal Service designated the Certified Mail as "RETURN TO SENDER UNCLAIMED UNABLE TO FORWARD." The Certified Mail was marked "RECEIVED" by the Commission on October 16, 2024.

Our file indicates that the claimant contacted the Commission's Legal Advisor Division on October 22, 2024. A Legal Advisor noted on that date, "Expl the Comm. opinion and how to req't appeal if she decides to pursue claim further." The Legal Advisor further noted on October 29, 2024, "Discussed how to req't appeal. She said her neighbor had her opinion and brought it to her. Expl process and what has to be paid when going through process with ct of appeals. She said she had new med. evid. That was

avail. at time of dec. Expl not likely ct of appeals would allow but could ask for it.”

Our file indicates that the claimant received the Full Commission’s September 19, 2024 opinion no earlier than October 21, 2024. The claimant asserts that she received the Full Commission’s opinion from a neighbor on October 21, 2024. The claimant’s “Motion for Reconsideration,” received by the Commission on November 1, 2024, was therefore timely filed in accordance with Ark. Code Ann. §11-9-711(b)(1)(Repl. 2012). The claimant seeks to introduce into evidence the record of an MRI scan performed at Regional One Health on July 15, 2024 in addition to accompanying correspondence dated July 19, 2024. The following are prerequisites by the Full Commission on proffer to present newly-discovered evidence: (1) the newly discovered evidence must be relevant; (2) it must not be cumulative; (3) it must change the result; and (4) the party seeking to introduce the evidence must be diligent. *Quinn v. Webb Wheel*, 52 Ark. App. 208, 915 S.W.2d 740 (1996), citing *Haygood v. Belcher*, 5 Ark. App. 127, 633 S.W.2d 391 (1982).

In the present matter, the Full Commission finds that the newly-discovered evidence proffered by the claimant is not relevant and would not change the result of her case regarding the issues of additional medical treatment and temporary total disability benefits. We therefore deny the

claimant's "Motion for Reconsideration." The claimant to date has not indicated that she intends to appeal to the Arkansas Court of Appeals. If the claimant chooses to appeal to the Arkansas Court of Appeals, the appeal will be governed by Ark. Code Ann. §11-9-711(b)(Repl. 2012) and the Arkansas Rules of Appellate Procedure – Civil.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I concur with the Majority's findings that the claimant's Motion for Reconsideration should be denied since the newly discovered evidence proffered by the claimant is not relevant and would not change the result of her case regarding the issues of additional medical treatment and temporary total disability benefits. However, I dissent from the Majority's opinion that the claimant's Motion for Reconsideration was timely filed.

Ark. R. Civ. P. 4(1) provides that:

Upon timely filing in the circuit court of a motion for judgment notwithstanding the verdict under Rule 50(b) of the Arkansas Rules

of Civil Procedure, a motion to amend the court's findings of fact or to make additional findings under Rule 52(b), a motion for a new trial under Rule 59(a), or any other motion to vacate, alter, or amend the judgment made no later than 10 days after entry of judgment, the time for filing a notice of appeal shall be extended for all parties. The notice of appeal shall be filed within thirty (30) days from entry of the order disposing of the last motion outstanding. However, if the circuit court neither grants nor denies the motion within thirty (30) days of its filing, the motion shall be deemed denied by operation of law as of the thirtieth day, and the notice of appeal shall be filed within thirty (30) days from that date.

Even conceding to the Majority's finding that the claimant received the Full Commission's Opinion on October 21, 2024, the claimant did not file her Motion for Reconsideration with the Commission until November 1, 2024, eleven (11) days after receiving the order, and should be denied since it was not timely filed within ten (10) days.

The Court of Appeals has ruled that Ark. R. App. P. Civ. 4(b)(1) applies to appeals from decisions of the Arkansas Workers' Compensation. *Peco Foods, Inc. v. Johnson*, 687 S.W.3d 840 (Ark. Ct. App. 2024).

Since the Motion for Consideration was not timely filed, the time for filing a notice of appeal was not extended, and the claimant cannot now file a notice of appeal to the Court of Appeals.

For the reasons stated above, I concur, in part, and dissent, in part.

MICHAEL R. MAYTON, Commissioner