

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **G903681**

JUAN C. MONTES, EMPLOYEE

CLAIMANT

TYSON POULTRY INC., SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED **SEPTEMBER 7, 2021**

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

Claimant appearing *pro se*.

Respondent represented by R. SCOTT ZUERKER, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On August 3, 2021, the above captioned claim came before the Workers' Compensation Commission in Fort Smith, Arkansas, for a hearing. A pre-hearing conference was conducted by Administrative Law Judge Eric Paul Wells on June 2, 2021, and a prehearing order was filed that same date. A copy of the prehearing order has been marked as Commission's Exhibit No. 1 and made part of the record without objection.

The parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this case.
2. On November 28, 2018, the employee/employer relationship existed between the parties.
3. The claimant sustained a compensable injury to his left hand on November 28, 2018.

The issues to be litigated are limited to the following:

1. Whether claimant is entitled to additional medical treatment for the injury to his left hand.

2. Whether claimant is entitled to temporary total disability benefits.
3. If claimant is entitled to temporary total disability benefits, what the compensation rate should be for such benefits.
4. Whether this claim is barred by the statute of limitations.

The claimant contends that as a result of his compensable injury to his left hand, he is entitled to additional medical treatment and temporary total disability benefits.

The respondent contends that all appropriate benefits have been paid, and that the statute of limitations has run in this matter.

The above stipulations are hereby accepted as fact. From a review of the record as a whole, including the exhibits introduced by each party, and having heard testimony and observed the demeanor of the witnesses, the following decision is rendered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 his claim was timely filed. Instead, the evidence preponderates that this claim for additional benefits is barred by the statute of limitations as set forth in Ark. Code Ann. § 11-9-702(b)(1) (Repl. 2012).
4. Because of the above findings/conclusions, the remaining issues--whether Claimant entitled to reasonable and necessary medical treatment, and whether temporary total disability benefits are appropriate—are moot and will not be addressed.

FACTUAL BACKGROUND

The parties stipulated that claimant suffered a compensable injury to his left hand on November 28, 2018. Respondent produced a record that showed the last medical benefit for which

it made payment on this compensable injury was for a doctor's visit on December 20, 2018. (R.NM.3) Respondent maintains, and in his testimony, claimant agreed (TR.26), that respondent made no payment of benefits on this compensable claim since that time. Claimant testified that he had submitted additional medical bills to respondents that were not paid. (TR.26) As respondents raised the statute of limitations as a bar to any further benefits being due to claimant for this compensable injury, that issue should be decided before examining the merits of claimant's request for additional benefits. If this matter is barred by the statute of limitations, then the remaining issues in this matter are moot.

HEARING TESTIMONY

Regarding the timeliness of the filing of this claim, the following chronology was established:

1. On November 28, 2018, claimant suffered an injury to his left hand, which respondents accepted as compensable. (TR.30)
2. In June 2019, Attorney Michael Ellig began representing claimant (TR 31) and filed an AR-C for claimant on June 17, 2019. (TR.26)
3. On January 16, 2020, an Order was entered dismissing the claim filed in June 2020. (TR.26)
4. On March 11, 2020, Mr. Ellig was allowed to withdraw as claimant's attorney. (TR.31)
5. In July 2020, claimant called the Commission's Legal Advisor Division to inquire about the status of his case. (TR. 31)
6. On March 23, 2021, claimant spoke to a legal advisor for the Commission. (TR.32)
7. On March 29, 2021, claimant sent a written request for benefits to the Commission, which was the first such written request since the claim was dismissed in January 2020. This request was filed on April 2, 2021. (TR.28)

ADJUDICATION

This matter is largely governed by two statutes. A.C.A. § 11-9-702 (b)(1) provides as follows:

“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 last payment of compensation or two (2) years from the date of injury, whichever is greater.”

A.C.A § 11-9-702 (c) states:

“A claim for additional compensation must specifically state that it is a claim for additional compensation. Documents which do not specifically request additional benefits shall not be considered a claim for additional compensation.”

For purposes of the statute of limitations, the date a medical benefit is furnished is deemed to be payment of compensation—not the date that payment for the medical services is actually made. See *Heflin v. Pepsi Cola Bottling Co.*, 244 Ark. 195, 424 S.W.2d 365 (1968); *Cheshire v. Foam Molding Co.*, 37 Ark. App. 78, 822 S.W.2d 412 (1992). In this case, it is undisputed that the last payment of benefits for claimant’s compensable injury occurred for a doctor’s visit on December 20, 2018; one year after that doctor’s visit would be December 20, 2019. As such, the greater period of time as per A.C.A. § 11-9-702 (b)(1) would be two years after the date of claimant’s injury, or November 28, 2020. After his case was dismissed for lack of prosecution, claimant testified that he had made calls to the Commission’s Legal Advisor’s Division in July 2020; however, nothing was filed with the Commission before April 2, 2021, when claimant sent a letter to the Commission which stated, in pertinent part, “I am requesting a hearing for additional benefits on following claim G903681.”

Once this matter was dismissed on January 16, 2020, it was as if it had never been filed. "The claim is considered to have never been filed, and unless a new claim is filed within the statutory period of time allowed by section 11-9-702, the statute of limitations will bar any subsequent claims." *Dillard v. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (2004). Claimant’s call to the

Commission in July 2020 is not a document requesting additional benefits, as required by A.C.A § 11-9-702 (c). While the document filed with the Commission on April 2, 2021, was not an official AR-C form, it did request “a hearing for additional benefits” on this claim. Thus, even if I deem that request adequate for the purpose of requesting additional benefits, it was nonetheless untimely by over four months, as the last date to toll the statute of limitations was November 28, 2020.

Claimant testified that he did not understand that there was a time limit for him to pursue his claim (TR.6), and I believe he did not intend to abandon his claim for injuries to his left hand. Unfortunately, however, claimant’s lack of knowledge of how to proceed does not serve to extend the statute of limitations. Claimant’s request for additional benefits must, therefore, be denied.

ORDER

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

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$397.30.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE