

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G801948**

**TERESA A. REED,
EMPLOYEE**

CLAIMANT

**MILLER COUNTY JUDGE,
EMPLOYER**

RESPONDENT

**ASS'N OF ARKANSAS COUNTIES WORKERS'
COMPENSATION TRUST,
AAC RISK MANAGEMENT SERVICES, INC.
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION AND ORDER FILED DECEMBER 13, 2021

Hearing conducted before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, on September 23, 2021, in Texarkana, Miller County, Arkansas.

The claimant was represented by the Honorable Michael W. Boyd, Bell & Boyd, PLLC, Magnolia, Montgomery County, Arkansas.

The respondents were represented by the Honorable Jason Ryburn, Ryburn Law Firm, Little Rock, Pulaski County, Arkansas.

INTRODUCTION

In the Prehearing Order filed December 7, 2020, the parties agreed to the following stipulations, which they modified and affirmed on the record at the hearing:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.
2. The employee/employer/carrier-TPA relationship existed at all relevant times including a specific date, October 20, 2017, when the claimant alleges she sustained compensable injuries to her right leg, upper right thigh, right hip, and lower back.
3. The claimant is an elected official, and she continued to receive her full salary following the alleged October 20, 2017, injuries.
4. The respondents controvert the alleged October 20, 2017, injuries, except for the

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right hamstring injury, which they accepted as compensable and for which they have paid some benefits.

5. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Commission Exhibit 1 at 1-2; Hearing Transcript at 6-29).

The Prehearing Order filed December 7, 2020, which the parties discussed in some detail and substantially modified on the record at the hearing, somewhat confusingly reflects the issues to be litigated were:

1. Whether the claimant sustained “compensable injury”(ies) within the meaning of the Arkansas Workers’ Compensation Act (the Act), to her left hip; right upper thigh, right hip, and lower back on October 20, 2017.
2. If these injuries are deemed compensable, whether and to what extent the claimant is entitled to medical benefits. The claimant specifically reserves the issues of her entitlement to temporary total disability (TTD), permanent partial disability (PPD), and other benefits *if* her claim is deemed compensable.
3. Whether any or all of the alleged injuries are related to the October 20, 2017, incident and, if so, whether the claimant’s claim for additional medical and indemnity benefits related to the October 2017 incident is barred by the applicable statute of limitations pursuant to *Ark. Code Ann.* § 11-9-702 (2021 Lexis Replacement).
4. Whether the claimant’s attorney is entitled to a controverted fee on these facts.
5. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Comms’n. Ex. 1 at 2; T. 6-29).

Consequently, the ALJ requested the parties to file post-hearing briefs to specifically identify and clarify the issues they intended to litigate. (T. 148-50). After further clarification during the course of the hearing, and as the totality of the record – and particularly the parties’

well-researched and well-written post-hearing briefs clarify – pursuant to their mutual agreement the specific issues the parties intended to litigate, and did in fact litigate, at the hearing were:

1. Whether the claimant’s left hip and lower back/lumbar spine conditions, which she contends were the result of the October 20, 2017, slip-and-fall incident, are barred by the applicable statute of limitations (S/L) of *Ark. Code Ann.* Section 11-9-702(a);

and

2. If the alleged left hip and lower back/lumbar spine claims are not barred by the applicable S/L, whether the claimant has met her burden of proof in demonstrating they constitute “compensable injury”(ies) within the Act’s meaning.

(*See*, Claimant’s Post-Hearing Brief at 11, 1-11; Respondents’ Post-Hearing Brief at 1 -14 (page 1 is misnumbered as page “2” of brief; T. 14; 6-29; 148-50) (Bracketed material added).

CONTENTIONS

The claimant contends she is entitled to additional medical benefits for the October 20, 2017, alleged injuries. Specifically, she contends she also sustained injuries to her left hip and lower back/lumbar spine on October 20, 2017, and she is entitled to medical benefits. The claimant denies the applicable S/L bars any of her claims. The claimant specifically reserves any and all other issues for future litigation and/or determination. (Comms’n Ex. 1; T. 6-29; Claimant’s Brief at 1-12)

The respondents assert the following contentions and defenses. First, the respondents contend the S/L has run on any and all alleged injury(ies) for the claimant’s right knee, right hip, right upper leg, left hip, and lower back. The respondents contend the S/L expired with respect to these alleged injury(ies) on October 20, 2019, because neither the claimant nor anyone acting on her behalf, ever filed a Form AR-C claiming any benefits for these alleged injuries. Second,

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alternatively, the respondents contend the claimant's current left hip and lower back/lumbar spine symptoms and conditions are not related to the October 20, 2017, work incident, and the compensable left hamstring injury, which they accepted and for which they paid all appropriate benefits. The respondents contend the claimant's current symptoms/complaints with respect to her left hip and lower back/lumbar spine do not constitute "compensable injury"(ies) pursuant to the Act. (Comms'n Ex. 1 at 3; T. 6-29; Resp. Brief at 1-14 (page 1 is misnumbered as page "2" of brief) (Bracketed material added). The respondents specifically reserve any and all other issues for future litigation and/or determination.

The record contains the hearing transcript and any and all exhibits contained therein and attached thereto, as well as the parties' blue-backed post-hearing briefs.

STATEMENT OF THE CASE

The claimant, Ms. Teresa Reed (the claimant), is 59 years old, and was 55 years old at the time of the October 20, 2017, work incident. She is the elected Miller County Treasurer, and has held this position for almost six (6) years. Over four (4) years ago, on Friday, October 20, 2017, around 4:20 p.m., approximately ten (10) minutes before her office closed, the claimant was walking toward the bathroom at work when she slipped and fell. At the hearing she testified as to how her fall occurred: "I got about midways to the restroom, and as I rounded the corner, my right foot slipped and I fell on my left knee and my palm, caught myself." When she fell, she felt a "pop" in the back of her right thigh. (T. 68-69).

The claimant testified the then - Miller County Judge, Roy John McNatt, was sitting at his

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assistant's desk with the door open and saw her fall. She said County Judge McNatt was coming out of the office to help her, but she told him she was okay. The claimant testified she was able to get up on her own, but she felt severe pain and "could barely walk." (T. 71-73; 40).

When she arrived back at her office the claimant told her assistant, Ms. Leslie Ross, she had fallen. Later in the day when she arrived home from work, she also told her husband, Mr. Dale Reed, who is retired, about the fall. Mr. Reed testified somewhat differently as to the claimant's initial injuries, as he said she told him she had fallen, "On her hips and lower back", as opposed to her knee. Mr. Boyd could not recall whether the claimant told him she had fallen on her left knee and palm. The claimant herself testified she felt pain in her right hip, which she described as a "throbbing, deep pain." She also said she had a red mark on her left knee and left hand after the fall, and she developed bruising on her left knee and hand, as well. (T. 56; 36-40; 39; 73-74).

The claimant continued to work and did not seek or request medical treatment until some nine (9) nine days after the October 20, 2017, incident. On October 29, 2017, she sought treatment by first going to the county judge's administrator's office. The administrator completed a Form AR-N, which lists the date of the accident as "10-20-2017"; lists the body parts injured as, "Right – side – Hip – upper thigh"; and describes the "cause of injury" as, "walking to office – turned corner went down – landing on my right side." The claimant testified she signed, and obviously read the Form AR-N, because she disagreed with the county judge's administrator's description as to how the slip-and-fall occurred. The claimant never requested, nor did the county judge's administrator provide her, a Form AR-C, according to the claimant's testimony. It is undisputed that neither the claimant nor anyone acting on her behalf ever filed a Form AR-C relating to the

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October 20, 2017, slip-and-fall. The former Miller County judge's administrator did not testify at the hearing. The county judge's administrator directed the claimant to Healthcare Express for evaluation and treatment. (T. 144-47; 75; Claimant's Exhibit 3).

The Healthcare Express Medical Records of October 29, 2017, are consistent with the claimant's description of how the injury occurred. At this visit she gave a history of having landed on her left hand and left knee, and also reported to the treating physician she "heard something pop on her right hip/thigh and she landed on her buttocks." The doctor took X-rays and gave her a prescription for muscle relaxers. The claimant's husband, Mr. Boyd, testified the claimant complained of pain in her low back, legs, and left hip since the October 2017 slip-and-fall. (T. 43). Initially, the physicians at Healthcare Express treated the claimant conservatively with muscle relaxers, and physical therapy (PT); however, when her symptoms did not improve, she was referred to an orthopedic specialist, Dr. Darius Mitchell, who is associated with the Collum & Carney Clinic in Texarkana, Texas. (CX1 at 1-11).

Dr. Mitchell evaluated the claimant, diagnosed her with a right knee medial meniscus tear, and torn hamstring muscle in her right leg, scheduled her for surgery, and repaired the torn right hamstring via surgery in March 2018. (T. 80, 204, 213; and CX1 at 37-45). The claimant convalesced for eight (8) to ten (10) weeks after her hamstring surgery, wore a brace on her leg, and then underwent PT for another eight (8) weeks. (CX1 at 45-71; T. 81-84).

Following the surgery to repair her torn right hamstring, the claimant continued to report left hip pain to Dr. Mitchell. Dr. Mitchell next referred the claimant to pain management for her complaints of pain in her lower back and left hip, where she was treated conservatively with steroid

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injections. She testified she has had three (3) steroid injections in her lower back, and two (2) in her left hip, which provided her relief. (T. 89; 46). The claimant testified she is still experiencing symptoms every day. Dr. Mitchell with piriformis syndrome. (T. 94; 260; 264;269; CX1 at 85, 89, 94). Dr. Mitchell has stated his opinion in medical records that the claimant's injuries to her left hip and low back are related to her slip-and-fall at work in October 2017. (CX1 at 100-103; Tr. 277, 278, 280).

The claimant testified under oath she has had no prior injuries to her low back, left hip, and no prior car accidents, slip-and-falls, or injuries to her low back and left hip since the fall, which her husband corroborated. (T. 47; 94). According to the claimant, in 2018, while she was in treatment with Dr. Mitchell, she told the workers' compensation insurance adjuster for the Association of Arkansas Counties Workers' Compensation Trust, Ms. Nash, that she was hurting in her lower back and left hip. (T. 98-99; 274; Claimant's Exhibit 2; CX1 at 98). Ms. Nash sent her to Healthcare Express where they took X-rays and based on these X-ray results, the counties denied additional medical treatment for the claimant's lower back and left hip. (T. 102).

Respondents' Exhibit No. 2 contains medical records/diagnostic test results from January 10, 2014, through October 26, 2016, which predate the claimant's October 20, 2017, slip-and-fall, that reveal mild degenerative changes in both her right and left knees, and a history of osteoarthritis. (Respondents' Exhibit 2 at 1-14). In a report dated January 10, 2014, the health care provider notes the claimant was "having nausea secondary to pain", and he wanted her to undergo and MRI to evaluate her lateral meniscus. (RX2 at 14).

Respondents' Exhibit No. 3 is a medical report from Healthcare Express dated January 17,

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2018, that notes the claimant's continued complaints of pain referenced above and notes the fact she has undergone MRIs of her right hip, right thigh, and right knee, all of which reflect osteoarthritic and degenerative changes. These records note the claimant's right thigh strain, and torn medial meniscus in her right knee of little concern. The most significant finding in this report is the physician's admonition and encouragement to the claimant as follows:

Notes: Advised pt she needed to follow with PCP asap re: abnormal findings on MRI concerning possibility of cancer. She was upset because she went to ER for possible broken rib on New Year's Day and was told she had a nodule found on her lung she needed to have re-evaluated as well.

(RX3 at 2).

DISCUSSION

The Burden of Proof

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of the evidence. *Ark. Code Ann.* § 11-9-704(c)(2) (2021 Lexis Replacement). The claimant has the burden of proving by a preponderance of the evidence she is entitled to benefits. *Stone v. Patel*, 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). In determining whether the claimant has met her burden of proof, the Commission is required to weigh the evidence impartially without giving the benefit of the doubt to either party. *Ark. Code Ann.* § 11-9-704(c)(4) (2020 Lexis Repl.); *Gencorp Polymer Products v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987).

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Ark. Code Ann. Section 11-9-704(c)(3) (2021 Lexis Repl.) specifically mandates the ALJ, the Commission, and the courts “shall strictly construe” the Act, which also requires them to read and construe the Act in its entirety, and to harmonize its provisions when necessary. *Farmers Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002). The Arkansas Supreme Court has held that “strict construction” means narrow construction and requires that nothing be taken as intended that is not clearly expressed. *Stewart v. Ark. Glass Container*, 2010 Ark. 198, 366 S.W.3d 358 (2010) (citing *Hapney v. Rheem Mfg. Co.*, 341 Ark. 548, 26 S.W.3d 771 (2000)). “The Act’s mandated doctrine of strict construction requires our appellate courts to use the plain meaning of the language employed.” *Id.*

All claims for workers’ compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep’t of Corrections v. Glover*, 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Deana Constr. Co. v. Herndon*, 264 Ark. 791, 595 S.W.2d 155 (1979). It is the Commission’s exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. *Whaley v. Hardees*, 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant’s or any other witness’s testimony, but may accept and translate into findings of fact those portions of the testimony it deems believable. *McClain v. Texaco, Inc.*, 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); *Farmers Coop. v. Biles, supra.*

It is the Commission’s duty to weigh the medical evidence just as it does any other evidence; and its resolution of the medical evidence has the force and effect of a jury verdict. *Williams v. Pro Staff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999). It is within the Commission’s

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province to weigh the totality of the medical evidence and to determine what evidence is most credible given the totality of the credible evidence of record. *Minnesota Mining & Mfg'ing v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999).

The claimant has failed to meet her burden of proof in demonstrating she filed any claim, much less a timely claim, for alleged injuries to her left hip and lower back/lumbar spine within the time period required by the applicable S/L, Ark. Code Ann. Section 11-9-702(a)(1).

The threshold issue to be decided in this litigation is whether the claimant's claims of injuries to her left hip and lower back/lumbar spine are barred by the applicable S/L. If the law as applied to the facts of this claim compel a finding the claims are barred, this renders moot the issue of whether the claimant can meet her burden of proof in demonstrating the alleged left hip and lower back/lumbar spine injuries meet the Act's definition of "compensable injury"(ies).

The parties both agree (Claimant's Brief at 9; Respondents' Brief at 3) the applicable, controlling S/L is *Ark. Code Ann.* Section 702(a)(1), entitled "**Filing of claims**", which specifically states:

(a) Time for Filing.

(1) A claim for compensation for disability on account of an injury, other than an occupational disease and occupational infection, *shall be barred unless filed with the Workers' Compensation Commission within two (2) years from the date of the compensable injury.* If during the two-year period following the filing of the claim the claimant receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter. For purposes of this section, the date of the compensable injury shall be defined as the date an injury is caused by an accident as set forth in § 11-9-102(4).

(Emphasis added). In this case, "the date of the compensable injury" is the date of the October 20, 2017, slip-and-fall incident wherein the claimant admittedly sustained a torn right hamstring, and a strain injury to her right hip. Two (2) years from the subject slip-and-fall incident date was

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October 29, 2019 – some two (2) years ago.

The filing of a claim is accomplished by the filing of a Form AR-C with the Commission. The burden of filing a claim within the within the time period the S/L mandates is on the claimant. *Plunkett v. St. Francis Valley Lumbar Co.*, 25 Ark. App. 195, 755 S.W.2d 240 (Ark. App. 1988). Likewise, the burden of proof is on the claimant to prove by a preponderance of the credible evidence of record that she timely filed her claim(s) within the statutorily-mandated timeframe; it is not on the respondents to prove she did not do so. *Stewart, supra*.

In this case, the respondents accepted the claimant's right hip and right hamstring injuries as compensable and paid medical benefits (which included payment for the surgical repair of the claimant's torn right hamstring) from the date the claimant first sought medical treatment at Healthcare Express on 10/29/2017, some nine (9) days after the incident, until their last payment of medical benefits on 11/8/2018, as indicated on the respondents' pay log report. (Respondents' Exhibit 1 at 3). The respondents did not pay any TTD benefits since Miller County continued to pay the claimant her full salary on the days she was off work recovering from these two (2) admitted, accepted, paid, and therefore compensable, injuries. (RX1 at 3-12).

It is undisputed that neither the claimant, nor anyone acting on her authority or on her behalf, ever filed a Form AR-C following the October 20, 2017, slip-and-fall incident. Again, *no Form AR-C was ever filed in this claim*. Frankly, whether or not it was or was not part of her job as the Miller County Treasurer to file Form AR-Cs with the Commission, as an elected county official who is responsible for the supervision of employees in the Miller County treasurer's office, one would expect the claimant to be knowledgeable concerning both the Form AR-C and the

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significance of completely and accurately filling it out and filing it with the Commission.

Although the claimant fell on her right side, and the medical records reflect the claimant was hurting on the right side of her body after the subject slip-and-fall, both the claimant and her husband testified at the hearing the claimant had injured pretty much her entire body and had experienced left hip and lower back pain after the incident. Still, again, it is undisputed that neither the claimant nor anyone authorized by her or acting on her behalf ever filed a Form AR-C concerning even the claimant's torn right hamstring and right hip (which the respondents admitted, accepted as compensable, and paid medical benefits), much less the new claims of left hip and lower back/lumbar spine condition/injuries the claimant now alleges were also the result of the October 20, 2017, slip-and-fall that occurred at 4:20 p.m. on Friday, October 20, 2017. While the claimant argues this fact is not fatal to her new claims of left hip and lower back injuries, respectfully, Arkansas law holds otherwise.

Nine (9) days after the 10/20/2017, fall, the claimant did go to the county judge's administrator and advised she wanted to see a doctor. The administrator completed a Form AR-N/"Employee's Notice of Injury" form, which the claimant signed indicating, among other things, the information on the form was accurate. (Claimant's Exhibit 3; and see the workers' compensation insurance fraud notice at the bottom of the Form AR-N, *Ark. Code Ann.* Section 11-9-106(a)). This Form AR-N lists the body parts the claimant injured as being her, "Right side – hip – upper thigh." The Form AR-N also describes the "cause of injury" was, "Walking to office – turned corner and went down – landing on my right side." The Form AR-N the claimant signed on October 29, 2017 as being accurate and truthful does not mention an alleged lower back/lumbar

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spine injury, nor does it mention anything about any alleged injuries on the left side of the claimant's body – *i.e.*, no left hip injury.

While at the hearing the claimant testified she “disagreed” with the way the county administrator filled-out the Form AR-N, by signing the form she adopted it, as well as the words and descriptions on it, as her own. If the claimant disagreed with anything the form stated, the time to correct it was *before she signed it*. The claimant could have obtained and filed another Form AR-N, completed it herself, and filed an amended form with the treasurer's office and/or Commission. For that matter, either the claimant or someone acting with her authority and on her behalf, could have and should have obtained a Form AR-C from Miller County or even the Commission's website, completed it, and timely filed it with the Commission. However, neither the claimant nor anyone acting on her behalf took any of these actions. Regardless, once again, the claimant's signing of the Form AR-N does not and cannot legally remedy her failure to either file, or cause to be filed, a Form AR-C with the Commission that alleges left hip and lower back/lumbar spine injuries as a result of the 10/20/2017 fall.

The claimant also contends she reported the alleged left hip injury to the respondents' adjuster handling the claim, Ms. Kim Nash. Even so, the claimant never filed, nor did she cause to be filed, a Form AR-C alleging she had also injured her left hip and lower back/lumbar spine in the October 2017 fall, for which she did not even seek medical treatment until October 29, 2017.

Initially, the claimant sought to represent herself in this matter. In an email to Ms. Deborah Flenory, who works in the Clerk of the Commission's office, which email was stamped as having been filed with the Commission on February 15, 2019, the claimant states only, “I would like to

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have a hearing on my workers' compensation claim." (Respondents' Exhibit 4).

Thereafter, still proceeding pro se, the claimant filed a fairly detailed handwritten response to the Commission's pro se "Claimant's Questionnaire" which she signed and dated 5/10/19. In response to inquiry/information request number 13 of this pro se questionnaire, the claimant responded: "Entitled to additional medical treatment." (RX4 at 3). *Nowhere* on the questionnaire does the claimant allege she requires additional medical treatment for either of her accepted and paid injuries (her torn right hamstring and/or her right hip).

Significantly, *nowhere on the pro se questionnaire does the claimant allege she injured her right hip and/or lower back/lumbar spine on 10/20/2017*, and this is the reason she was requesting medical treatment. (RX4 at 4). Arguably the first and only Commission filing in the hearing record in which the claimant alleges she also sustained injuries to her left hip (not mentioned in prehearing order) and lower back in the 10/20/2017 fall is the Prehearing Order filed December 7, 2020, after the December 1, 2020, prehearing teleconference, by which time she had retained counsel.

Not only is it undisputed the claimant never filed a Form AR-C at any time in this claim, it is also beyond reasonable dispute that none of the aforementioned filings in the record (other than the December 7, 2020, Prehearing Order) makes any allegation of alleged left hip and lower back/lumbar spine injuries related to the 10/27/2017 slip-and-fall. Moreover, there is no document in the record that may reasonably be construed to constitute such a filing.

If the claimant has not formally filed a Form AR-C, the applicable statute of limitations bars a claim filed outside the S/L deadline. *See, White County Judge v. Menser*, 2020 Ark. 140, 597 S.W.3d 640 (2020). Although *Menser* involved a claim for additional benefits, since the claimant

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had never formally filed a Form AR-C, our supreme court found the claim for additional benefits was barred by the applicable S/L; and that the court of appeals erred in finding the ALJ's prehearing order tolled the S/L since the prehearing order did not contain the information/language *Ark. Code Ann.* Section 11-9-702(c) specifically requires. In the case at bar – which both parties agree is a new claim of compensability for alleged left hip and lower back injuries.

In addition, and as the respondents note in their brief, the Arkansas Court of Appeals has held that an injury that a claimant intended to claim, but failed to specifically claim the injury within the statutory period prescribed by *Ark. Code Ann.* Section 11-9-702(a)(1) was barred by the S/L. In *Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 284 S.W.3d 91 (Ark. App. 2008), the court held that a timely claim for a compensable heart injury which was caused by a toxic inhalation, which also was alleged to have caused a lung injury, did *not* toll (or stop from running) the S/L for the filing of a claim for the lung inhalation injury. The *Britt* claimant claimed and received medical treatment for the heart attack in 1991. Thereafter, in 2003 the claimant filed claims for both heart and lung injuries allegedly resulting from toxic inhalation. The lung injury claim was filed well after the two (2)-year S/L had expired. Despite the fact the heart injury was the result of a toxic inhalation from which a lung injury may logically be inferred, the court held the claimant did not make a timely claim for the alleged lung injuries.

In another court of appeals case, *Wal-Mart Associates, Inc. v. Armstrong*, 2017 Ark. App. 175, 516 S.W.3d 310 (Ark. App. 2017), the court was asked to decide whether the Commission was correct to allow a Form AR-C to toll the statute of limitations when the Form AR-C the claimant filed failed to list the allegedly injured body part, but where all the boxes for the “benefits

requested” had been checked. In answering this question with a clear “no,” the *Armstrong* court explained:

We must answer the question of whether the Commission erred as a matter of law in concluding that the 2008 Form AR-C filed in this case tolled the statute of limitations. To phrase the question another way, was the 2008 Form AR-C an unresolved claim for benefits pertaining to Armstrong's left shoulder injury? Under the circumstances of this case, we hold that the Commission did err as a matter of law. Here, Armstrong failed to provide sufficient information in the 2008 Form AR-C to toll the statute of limitations. In completing the 2008 Form AR-C, Armstrong did not specifically list that she suffered neck and shoulder injuries. In fact, *she listed no specific injury to any part of her body, choosing to leave her claim for injuries open-ended.* Additionally, with regard to the type of benefits being sought, Armstrong checked all the boxes available on the 2008 Form AR-C. Such a generic filing is the equivalent to no filing at all. It simply provides no information about the type of claim being asserted by the claimant. *To allow such a generic filing to toll the limitations period indefinitely for some unspecified injury is contrary to the plain language of the statute and to the rationale of our prior caselaw.* As such, we hold, as a matter of law, the generic Form AR-C filed in this case was not sufficient to toll the statute of limitations.

Armstrong, at 313 (Emphases added). Once again, in the instant claim, neither the claimant nor anyone acting on her behalf ever filed any Form AR-C at all, at any time..

In a claim such as the one at issue here, where the claimant never, ever even filed a Form AR-C with respect to *any* alleged body part(s) – even the torn hamstring muscle in the claimant’s right leg, and her right hip strain, which the respondents admitted, accepted, and paid – all the aforementioned case law compels a finding that any and all claim(s) for any and all body parts filed more than two (2) years from the injury date of October 20, 2017 – or *after October 20, 2019* – shall, and must as a matter of law, be deemed as barred by the applicable S/L of **Ark. Code Ann.** Section 11-9-702(a)(1). In addition, because the applicable S/L bars *both* the claimant’s newly alleged left hip and lower back/lumbar spine injury claims, the issue of their alleged

compensability is rendered moot and, therefore, I will not address the compensability issue.

Therefore, for all the aforementioned reasons, I hereby make the following:

FINDINGS OF FACT AAND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.
2. The stipulations contained in the Prehearing Order filed December 7, 2020, which the parties modified and affirmed on the record at the hearing, hereby are accepted as facts.
3. The claimant has failed to meet her burden of proof in demonstrating that either of the alleged injuries to her left hip and lower back/lumbar spine were timely filed pursuant to *Ark. Code Ann.* Section 11-9-702(a)(1). Pursuant to the applicable statute of limitations of *Ark. Code Ann.* Section 11-9-702(a)(1), the S/L for any and all injury(ies) related to the October 20, 2017, slip-and-fall incident expired on October 20, 2019. As a matter of law, any and all claims filed thereafter must, and shall be deemed, barred by the applicable S/L.
4. Neither the claimant nor anyone acting on her behalf *ever* filed a Form AR-C alleging she had sustained a “compensable injury”(ies) to any part of her body, including but not limited to, her left hip and lower back/lumbar spine. Moreover, neither the claimant nor anyone acting on her behalf filed a Form AR-C, nor did they take any action consistent with the subject statute of limitations and the case law cited in this opinion and order sufficient to toll the running and expiration of the applicable S/L, which expired on October 20, 2019.
5. Since the claimant’s alleged left hip and lower back/lumbar spine injuries are barred by *Ark. Code Ann.* Section 11-9-702(a)(1), the issue of whether either or both of these alleged injuries constitutes a “compensable injury”(ies) within the Act’s meaning is rendered moot, and shall not be addressed herein.
6. The claimant’s attorney is not entitled to a controverted fee on these facts.

Wherefore, for all the aforementioned reasons, I am compelled by the applicable law to deny and dismiss this claim in its entirety.

If they have not already done so, the respondents shall pay the court reporter’s invoice

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within ten (10) days of their receipt of this opinion and order.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

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