

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **G805579**

KENY SOSA, EMPLOYEE	CLAIMANT
KAWNEER COMPANY INC., EMPLOYER	RESPONDENT#1
HELMSMAN MANAGEMENT SERVICES LLC, INSURANCE CARRIER	RESPONDENT#1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT#2

OPINION/ORDER FILED **JUNE 1, 2023**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF, in Springdale, Washington County, Arkansas.

Claimant appearing *pro se*.

Respondents #1 are represented by RICK BEHRING, JR., Attorney, Little Rock, Arkansas.

Respondent #2 is represented by CHRISY L. KING, Attorney, Little Rock, Arkansas; although not appearing.

OPINION/ORDER

On August 21, 2018, claimant filed a Form AR-C, alleging that on July 23, 2018, he had injured his left knee and his back. He was subsequently represented by Ms. Evelyn Brooks. The parties agreed that claimant suffered compensable injuries. A full hearing before Administrative Law Judge Amy Grimes was conducted on October 1, 2020, on the issues of whether claimant was entitled to additional medical treatment for his back injury by Dr. James Blankenship, including surgery, and whether Claimant was entitled to temporary total disability benefits from April 1, 2019, to a date yet to be determined. All other issues were reserved.

An opinion was issued by Administrative Law Judge Katie Anderson on January 28, 2021, as Judge Grimes was no longer serving as an ALJ as of December 31, 2020. Judge Anderson denied

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claimant's request for additional medical treatment by Dr. Blankenship, and further denied his request for temporary total disability benefits.

Claimant appealed this decision to the Full Commission, which affirmed and adopted the decision of the ALJ on July 13, 2021 (Commissioner Willhite dissenting). That decision was appealed to the Arkansas Court of Appeals, and affirmed on May 4, 2022, *Sosa v. Kammeer Co.*, 2022 Ark. App. 195, 645 S.W.3d 26, 2022 Ark. App. LEXIS 198.

On June 20, 2022, claimant filed a second Form AR-C, again alleging a compensable injury on July 23, 2018. This AR-C form specified that this claim was for the left shoulder and left knee, omitting any reference to the back injury that had previously been litigated. Claimant was still represented by Ms. Brooks at that time. However, Ms. Brooks subsequently filed a Motion to Withdraw, which was granted on July 15, 2022; no other attorney entered an appearance on claimant's behalf.

On January 18, 2023, respondent #1 filed a Motion to Dismiss, alleging that it had been more than six months since claimant filed his Form AR-C with the Commission, but he had not made a request for a hearing in that time. A hearing on respondent's Motion to Dismiss was scheduled for March 16, 2023. Notice of the scheduled hearing was sent to claimant by certified mail at the last known address in the Commission's file. The notice was received by claimant; in a letter dated February 1, 2023, claimant objected to this matter being dismissed. Claimant was instructed to file a prehearing questionnaire, and he did so on March 7, 2023. A prehearing conference was held on April 13, 2023, after which respondent #1 filed an Amended Motion to Dismiss, requesting that this matter be dismissed with prejudice. The Amended Motion to Dismiss was rescheduled for a hearing on May 18, 2023.

At the hearing, the following exchange took place between the Court, claimant, and counsel for respondent #1:

The Court: I'm looking at the transcript of the hearing that took place on October 1, 2020, and the issues that were litigated at that hearing. I'll just read them into the record:

“The issues to be litigated here today or whether the claimant is entitled to medical treatment by Dr Blankenship including a surgery whether claimant is entitled to temporary total disability benefits from April 1, 2019 to a date to be determined and an attorney's fee.”

**Are you asking today to be reimbursed for time you missed from work because of the back surgery and Dr Blankenship's bills for the back injury? Is that what you're asking?**

Claimant: **I'm asking for reimbursement of the back surgery and the time that I have been off since the last time they paid me.**

The Court: Your AR-C form says you injured your left shoulder and left knee while working. It doesn't mention the back injury.

Claimant: Who wrote this though?

The Court: Your attorney at the time

Claimant: She probably did but, on the paper, there was - when they took me to the medical thing, I have it on file right here where it says my back was mentioned the first time.

The Court: But I just read to you that in October 2020 it was announced, probably in this room, that you were litigating your back case in 2020. You heard me read that. That was all that was litigated was the back injury. **You're telling me today you want to relitigate the back injury. Right?**

Claimant: **Correct. Well, right here at first of the C form on page one Evelyn Brooks made a mistake and she didn't write my back on it but –**

The Court: I can't speak for Ms. Brooks, but I can tell you she knew in June of 2022 you cannot relitigate your back injury because it's already been litigated and decided by the Full Commission and the Court of Appeals. Even though you don't agree with their decision, a decision on that has been made. Mr. Behring, what is your position on relitigating the back injury?

Mr. Behring: That it is barred by *res judicata* and is-

The Court: Let's not use a Latin term. I know what the phrase means.

Mr. Behring: I'm sorry, Your Honor. it has already been litigated. It has already been decided and under the law, once you do that once, you don't get to do it again.

The Court: I have in front of me the decision from the Court of Appeals that says, "Mr. Sosa first contends that substantial evidence does not support the Commission's finding that the back surgery is not reasonably necessary in connection with his admittedly compensable injury by the Court."...

Let me quote again from the Court of Appeals. This is page 5 of the Court of Appeals decision. **"The commission determined that Sosa failed to prove that back surgery by Dr Blankenship was reasonably necessary in connection with his compensable back injury or that he was entitled to additional temporary total disability benefits for his back injury.** That's what Judge Grimes found, that's what the Full Commission found, and that's what the Court of Appeals found, that you had failed to prove your back injury was connected with your work. (Emphasis added)

Although the AR-C form filed on June 20, 2022, requested benefits for an injury only to his left shoulder and left knee, claimant clearly stated that he sought reimbursement for the cost of a back surgery he had in November 2021, and for compensation from time off work due to that surgery. His statements at the hearing on the motion to dismiss did not mention his shoulder nor his knee injury. In his prehearing questionnaire, he listed only Dr. Blankenship's notes regarding the November 1, 2021 back surgery as those he would bring to the hearing. As set forth above, claimant answered affirmatively when asked if he was trying to relitigate his back injury claim. As I explained to him at the hearing, relitigating this matter is not allowed under Arkansas law. For that reason, and without

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addressing respondent's argument pursuant to §11-9-702 (a)(4) and (d),<sup>1</sup> I find that the Motion to Dismiss with prejudice on the grounds that this particular injury has been previously litigated and decided in respondent #1's favor should be granted.

In its Amended Motion to Dismiss, Respondent #1 sought sanctions under §11-9-717 and Rule 11 of the Arkansas Rules of Civil Procedure for bringing this action. I understand why such sanctions were sought, but I am going to decline to impose sanctions at this time. Claimant is not an attorney, and I do not expect him to fully understand the application of *res judicata*. I find it hard to believe that his attorney did not explain to him why the back injury was not included in the second AR-C form filed on his behalf on June 20, 2022; Ms. Brooks undoubtedly knew the back injury claim could not be relitigated, because of its omission from the AR-C filed after the decision by the Arkansas Court of Appeals. However, there is no evidence presented that claimant had been made aware of the bar to additional litigation. At the hearing, claimant said "the surgery now serves as new evidence supporting my case..." Indeed, the surgery took place five months after the decision by the Court of Appeals, and I do not find he acted in bad faith in believing the subsequent surgery was relevant to his claim. However, there is now no doubt claimant has been made aware of the finality of the previous litigation and can expect sanctions if any further action is taken regarding this claim.

This matter is hereby dismissed with prejudice.

**IT IS SO ORDERED.**

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JOSEPH C. SELF  
ADMINISTRATIVE LAW JUDGE

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<sup>1</sup> While it was unnecessary for me to decide if a dismissal pursuant to these statutes was appropriate, I note that it had been over six months since the AR-C of June 20, 2022, was submitted and when respondent's Motion to Dismiss was filed.