

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H305153**

**RICKY SMITH, EMPLOYEE**

**CLAIMANT**

**ARK. DEPT. OF TRANSP.,  
EMPLOYER**

**RESPONDENT**

**PUBLIC EMPLOYEE CLAIMS,  
CARRIER/TPA**

**RESPONDENT**

**OPINION FILED MAY 24, 2024**

Hearing before Administrative Law Judge O. Milton Fine II on April 12, 2024, in Forrest City, St. Francis County, Arkansas.

Claimant *pro se*.

Respondents represented by Mr. Robert H. Montgomery, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On April 12, 2024, the above-captioned claim was heard in Forrest City, Arkansas. A prehearing conference took place on February 5, 2024. The Prehearing Order entered on that date pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

**Stipulations**

The parties discussed the stipulations set forth in Commission Exhibit 1. Following an amendment of Stipulation No. 2 to correct a typographical error, they are the following, which I accept:

SMITH – H305153

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier/third-party administrator relationship existed among the parties on August 6, 2020, when Claimant was involved in a motor vehicle accident.
3. Respondents have controverted this claim in its entirety.
4. Claimant's average weekly wage entitles him to the maximum compensation rates, \$711.00/\$533.00.

Issues

The parties discussed the issues set forth in Commission Exhibit 1. The following were litigated:

1. Whether this claim is barred by the statute of limitations; or whether Respondents are estopped from raising this defense.
2. Whether Claimant sustained compensable injuries to his neck, back, shoulders, chest, and arms by specific incident.
3. Whether Claimant is entitled to reasonable and necessary medical treatment of his alleged injuries.
4. Whether Claimant is entitled to temporary total disability benefits from August 12, 2020, to a date yet to be determined.
6. Whether Respondents are entitled to an offset concerning the short-term disability benefits paid to Claimant in connection with his alleged injuries.

All other issues have been reserved.

Contentions

The respective contentions of the parties are as follows:

Claimant:

1. Claimant contends that on August 6, 2020, he was rear-ended in a motor vehicle accident. This resulted in compensable injuries to his neck, shoulders, chest, arms, and back. He also suffers from nervousness and anxiety,<sup>1</sup> and has discomfort when sleeping or when walking for an extended period.
2. Claimant further contends that he is entitled to reasonable and necessary medical treatment, plus temporary total disability benefits.

Respondents:

1. Claimant alleged that he sustained injuries as the result of a motor vehicle accident on August 6, 2020. Respondents have controverted this claim in its entirety.
2. Information currently available reflects that Claimant may have been involved in a motor vehicle accident on his way to work on August 6, 2020. He had not started work that day and was not performing employment

---

<sup>1</sup>Claimant did not raise an issue regarding whether his alleged “nervousness and anxiety” are compensable. I am unable to raise issues *sua sponte*. For that reason, this will not be addressed. But I nonetheless note that nothing in the medical records before me show that Claimant has made a *prima facie* case that he has sustained a compensable mental injury under Ark. Code Ann. § 11-9-113 (Repl. 2012).

services at the time of the accident as required by Ark. Code Ann. § 11-9-102(4)(B)(iii) (Repl. 2012).

3. Claimant filed a Form AR-C dated September 13, 2023. The form appears to have been received by the Commission on September 18, 2023. It was received by Respondent Public Employee Claims Division on September 19, 2023. Respondents contend that this claim was not timely filed as required by Ark. Code Ann. § 11-9-702(a)(1) (Repl. 2012) and is therefore barred by operation of the statute. That provision states that claims for compensation shall be barred unless filed with the Commission within two years from the date of injury. This claim was filed more than three years after the date of the motor vehicle accident for which Claimant now requests benefits; therefore, it is time-barred.
4. In the event that this claim is ultimately found to be compensable, Respondents contend that: (1) the notice provisions of Ark. Code Ann. § 11-9-701(a)(1) (Repl. 2012) apply to the facts of this claim and that Respondents are thus not responsible for disability, medical, or other benefits prior to the receipt of Claimant's report of injury; and (2) they are entitled to all applicable credits and offsets related to his receipt of other disability and/or indemnity benefits from other sources.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, including medical reports, deposition testimony, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

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 the instant claim for initial benefits was timely filed. Instead, the evidence preponderates that it is barred by the statute of limitations set forth in Ark. Code Ann. § 11-9-702(a)(1) (Repl. 2012).
4. Because of the above finding, the remaining issues—whether Claimant sustained compensable injuries to his neck, back, shoulders, chest, and arms by specific incident, when did he provide notice of his alleged injuries, whether he is entitled to reasonable and necessary medical treatment of his alleged injuries, whether he is entitled to temporary total disability benefits, and whether Respondents are entitled to an offset—are moot and will not be addressed.

**CASE IN CHIEF**

**Summary of Evidence**

The witnesses were Claimant and Lieutenant Lonnie Banks.

Along with the Prehearing Order discussed above, the exhibits admitted into evidence in this case consist of the following: Claimant's Exhibit 1, a compilation of his medical records and related documentation, consisting of 952 numbered pages; Respondents' Exhibit 1, another compilation of Claimant's medical records, consisting of one index page and 22 numbered pages thereafter; Respondents' Exhibit 2, non-medical records, consisting of one index page and 21 numbered pages thereafter; and Respondents' Exhibit 3, the transcript of the deposition of Claimant taken December 11, 2023, consisting of 79 numbered pages.

**ADJUDICATION**

A. **Statute of Limitations**

Claimant has alleged herein that he sustained compensable injuries to his neck, back, shoulders, chest, and arms by specific incident as a result of a motor vehicle accident that the parties have stipulated took place on August 6, 2020. Respondents have controverted this claim in its entirety, per another stipulation. As Claimant acknowledged in his testimony and the evidence otherwise shows, no benefits of any type have been paid in connection with this claim. Arkansas Code Annotated § 11-9-702(a)(1) (Repl. 2012) sets out the applicable statute of limitations concerning a claim for initial benefits:

SMITH – H305153

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).

See *Wynne v. Liberty Trailer*, 2022 Ark. 65, 641 S.W.3d 621. The burden rests on Claimant to prove that his claim was timely filed. *Stewart v. Ark. Glass Container*, 2010 Ark. 198, 366 S.W.3d 358; *Kent v. Single Source Transp.*, 103 Ark. App. 151, 287 S.W.3d 619 (2008). Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), he must do so by a preponderance of the evidence. The standard “preponderance of the evidence” means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness's credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

SMITH – H305153

In order to be timely, Claimant's Form AR-C needed to have been filed within two years of the accident, or by August 6, 2022. However, he did not sign the claim form until over 13 months past this deadline, on September 13, 2023; and it was not filed with the Commission until five days thereafter, on September 18, 2023. Consequently, the statute of limitations was clearly abridged; and Claimant has not met his burden of establishing that it was filed in a timely manner.

In an effort to avoid this result, Claimant has asserted that the doctrine of equitable estoppel should bar Respondents from raising this affirmative defense. In *Snow v. Alcoa*, 15 Ark. App. 205, 691 S.W.2d 194 (1985), the Arkansas Court of Appeals addressed whether the doctrine of estoppel operates as a bar to the raising by respondents of the statute of limitations in the context of a workers' compensation claim.

The court wrote:

Estoppel is an equitable doctrine which is invoked in appropriate circumstances to prevent a party from prevailing on purely technical grounds after having acted in a manner indicating that the opposing party's strict compliance with the technicality would not be required. In *Foote's Dixie Dandy v. McHenry, Adm.*, 270 Ark. 816, 607 S.W.2d 323 (1980), the Arkansas Supreme Court stated the necessary elements of estoppel. The Court said:

(1) the party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel had a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury.

In the case at bar, none of the four elements listed above weigh in Claimant's favor. Regarding Element No. 1, Claimant was in his personal vehicle, en route to his



job as an officer with the State of Arkansas Highway Police, at the time he was struck. He contacted Lieutenant Banks, his supervisor, to inform him that as a result of the accident, he was not feeling well and was going home to rest. By Claimant's own admission, at the time of the collision, he had not yet clocked in and was not yet performing any of his law enforcement duties; he was merely commuting to work. Certainly, Banks was not in a position to believe otherwise. In *Hudak-Lee v. Baxter County Reg. Hosp.*, 2011 Ark. 31, 378 S.W.3d 77, the Arkansas Supreme Court stated:

In order for an accidental injury to be compensable, it must arise out of and in the course of employment. Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2009). A compensable injury does not include an injury that is inflicted upon the employee at a time when employment services are not being performed. Ark. Code Ann. § 11-9-102(4)(B)(iii) (Supp. 2009). The phrase "in the course of employment" and the term "employment services" are not defined in the Workers' Compensation Act. *Texarkana Sch. Dist. v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008). Thus, it falls to the court to define these terms in a manner that neither broadens nor narrows the scope of the Act. *Id.*

An employee is performing employment services when he or she is doing something that is generally required by his or her employer. *Id.*; *Pifer v. Single Source Transp.*, 347 Ark. 851, 69 S.W.3d 1 (2002). We use the same test to determine whether an employee is performing employment services as we do when determining whether an employee is acting within the course and scope of employment. *Jivan v. Econ. Inn & Suites*, 370 Ark. 414, 260 S.W.3d 281 (2007). The test is whether the injury occurred within the time and space boundaries of the employment, when the employee was carrying out the employer's purpose or advancing the employer's interest, directly or indirectly. *Id.* In *Conner*, 373 Ark. 372, 284 S.W.3d 57, we stated that where it was clear that the injury occurred outside the time and space boundaries of employment, the critical inquiry is whether the interests of the employer were being directly or indirectly advanced by the employee at the time of the injury. Moreover, the issue of whether an employee was performing employment services within the course of employment depends on the particular facts and circumstances of each case. *Id.*

Banks testified that Claimant never approached him and indicated that he wanted to initiate the workers' compensation process. Instead, Banks assisted him with applying for leave under the Family Medical Leave Act ("FMLA"). I credit this.

Concerning Element No. 2, the evidence does not show that Banks said or did anything to dissuade Claimant from filing a workers' compensation claim earlier than he did. Claimant eventually filed his Form AR-C on the advice of his physician, Dr. Lloyd Robinson. It was Claimant's testimony that as part of his training for Respondent employer, "[w]orkman [sic] comp was never mentioned." In contrast, Banks's testimony was that Claimant as an Arkansas Highway Police officer not only received training regarding workers' compensation, but that he was a recipient of emails that were sent out concerning the process. This includes a program called Company Nurse. The following exchange took place while Lieutenant Banks was on the witness stand:

- Q. Have you ever, in the course of this action, did you ever advise [Claimant] not to file a workers' compensation claim?
- A. No, sir.
- Q. Did you do anything that slowed down or deterred him from filing a workers' compensation claim?
- A. No, sir.

After consideration, I credit Banks over Claimant. In so doing, I note that photographs in evidence, which depict the bulletin board at the location where Claimant reported to work, included the contact information for Company Nurse that was to be employed "IN CASE OF WORKPLACE INJURY" (emphasis in original).

As for Element No. 3, Claimant was hardly ignorant of the true facts. As discussed above, he was the one person who had in his possession all of the facts surrounding his motor vehicle accident. Moreover, he had been instructed in the process of filing a workers' compensation claim. That doing so did not occur to him until his conversation with Dr. Robinson does not excuse this.

Finally, with respect to Element No. 4, the evidence establishes that Respondents did not engage any conduct on which Claimant relied to his detriment. Neither Banks nor anyone affiliated with Respondents did anything whatsoever to prevent Claimant from filing a claim earlier than he did. In sum, the doctrine of equitable estoppel does not bar Respondents from asserting their statute-of-limitations defense here.

Claimant cannot, and has not, proven that the instant claim was timely filed under Ark. Code Ann. § 11-9-702(a)(1). Instead, the evidence preponderates that it is barred by the statute of limitations set forth in Ark. Code Ann. § 11-9-702(a)(1) (Repl. 2012).

B. Remaining Issues

Because this claim is time-barred, the remaining issues—whether Claimant sustained compensable injuries to his neck, back, shoulders, chest, and arms by specific incident, when did he provide notice of his alleged injuries, whether he is entitled to reasonable and necessary medical treatment of his alleged injuries, whether he is entitled to temporary total disability benefits, and whether Respondents are entitled to an offset—are moot and will not be addressed.

SMITH – H305153

**CONCLUSION**

In accordance with the findings of fact and conclusions of law set forth above, this claim for initial benefits is hereby denied and dismissed.

**IT IS SO ORDERED.**

---

Hon. O. Milton Fine II  
Chief Administrative Law Judge