BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F006924

SABRINA SPENCER, EMPLOYEE	CLAIMANT
CONAGRA FROZEN FOODS, EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JANUARY 15, 2025

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

Claimant represented by the HONORABLE JOSEPH H. PURVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE JARROD S. PARRISH, Attorney at Law, Little Rock, Arkansas.

ORDER

The respondents appeal an administrative law judge's opinion filed August 21, 2024. The administrative law judge entered the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on May 22, 2024 and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant's claim for additional medical benefits is not barred by the statute of limitations.
3. Claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury from Dr. Kelly.
4. Respondent is liable for payment of the expense and cost of reporting and transcribing the deposition. Respondent is not liable for payment of the witness fee of Dr. Kelly for attending that deposition.

Under Arkansas law, the Full Commission is permitted to adopt the administrative law judge's opinion. *SSI, Inc. v. Cates*, 2009 Ark. App 763, 350 S.W.3d 421. In so doing, the Full Commission makes the administrative law judge's findings and conclusions the findings and conclusions of the Commission. *Id*. After reviewing the entire record *de novo*, we find that the administrative law judge's decision is supported by a preponderance of the evidence, correctly applies the law, and should be affirmed. The administrative law judge's findings of fact are therefore adopted by the Full Commission. The Full Commission denies the claimant's motion to strike the respondents' reply brief. The Full Commission assures both parties that, in performing our *de novo* review of the entire record, we have considered only the evidence submitted into the record at the hearing held August 1, 2024.

For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to a fee of five hundred dollars ($500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's opinion finding the claimant's claim for additional medical benefits is not barred by the statute of limitations.

The claimant suffered a compensable amputation of her right arm below the elbow while working for the respondent employer on June 12, 2000. Dr. James Kelly re-attached the claimant's arm and treated her between the years 2000 to 2007. After the claimant filled a prescription on January 18, 2008, she did not receive any medical or indemnity benefits until October 22, 2012, when she returned to Dr. Kelly. The respondent carrier authorized treatment at that time, and the claimant continued treating with Dr. Kelly until it was discovered that the statute of limitations had run in 2009.

After a hearing on the statute of limitations issue, an administrative law judge (ALJ) opined that the statute of limitations had not run based only on the claimant and Dr. Kelly's recollections of purported treatment ten to fifteen years prior. The respondents appeal.

Ark. Code Ann. § 11-9-508(a) requires an employer to provide an employee with medical and surgical treatment "as may be reasonably necessary in connection with the injury received by the employee." The

claimant has the burden of proving by a preponderance of the evidence that the additional treatment is reasonable and necessary. *Nichols v. Omaha Sch. Dist*., 2010 Ark. App. 194, 374 S.W.3d 148 (2010). However, the burden of filing a claim for additional benefits within the statute of limitations is upon the claimant. *Kent v*. *Single Source Transp*., *Inc*., 103 Ark. App. 151, 287 S.W.3d 619 (2008).

Arkansas Code Annotated § 11-9-702(b)(1) provides:

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

For over four years during the time between January 2008 and October 2012, the claimant did not seek medical benefits in this matter. Neither the claimant nor her physician have produced any credible evidence that the claimant received any medical benefits during this time.

The claimant was asked to produce any evidence she could obtain showing she received medical treatment or benefits between 2008 and 2012. To date, the claimant has not offered any records; medical reports, cancelled checks, bills, or bank records showing she received treatment during that time.

While the claimant offered numerous reasons for why she could not produce these documents, contending neither she nor the bank maintain records that far back, she was able to introduce medical reports as far back as 2000 at the hearing.

The claimant's treating physician, James Kelly, could not provide any documentary evidence proving he treated the claimant between 2008 and 2012. The claimant obtained Dr. Kelly's deposition in an effort to corroborate her own testimony. Dr. Kelly testified he could not "recall off -- you know, with uncertain -- with, you know, absolute certainty" he treated the claimant between 2008 and 2012. He could not provide a single recollection of a specific visit.

Dr. Kelly could provide no explanation for why the respondent carrier has no treatment records between 2008 and 2022. The only basis for his certainty he treated the claimant during that time is a single note from the year 2012 stating the claimant "presents with the typical pain she gets in the wintertime, and she has had this multiple times in the past." Dr. Kelly is clearly making an assumption here, stating, "[s]o that kind of tells you that I saw her in previous years, which would be your 2008 to 2012." However, this report dated October 12, 2012, does not state Dr. Kelly had seen or treated her. It merely states she has had the complaints multiple times in the past.

There are, however, clear records from claims adjuster Ramona Shull proving that the claimant did not receive treatment between 2008 and 2012, including a note stating, "[c]laimant last received a prescription in 2008 and has not seen the authorized treating doctor since 2007."

Ms. Shull later stated in her February 2013 adjuster's notes, "[a]fter no tx requests for nearly four years," the claim would be reopened at the claimant's request. Ms. Shull had previously filed a Form AR-4 with the Commission on July 30, 2010.

In *Miller v. Everett*, 252 Ark. 824, 481 S.W.2d 335 (1972), the Arkansas Supreme Court held:

> The statute of limitations applies with full force to the most meritorious claims, and the court cannot refuse to give the statute effect merely because it seems to operate harshly in a case involving an obviously meritorious claim.

Any statute of limitations will eventually operate to bar a remedy, and the time within which a claim should be asserted is a matter of public policy, the determination of which lies almost exclusively in the Legislative domain.

The Court cannot refuse to give the statute of limitations effect because it seems to operate harshly. *Porocel Corp*. *v*. *Circuit Court of Saline County*, 2013 Ark. 172 (2013). Doing so serves to protect the respondent "from having to defend an action in which the truth-finding process would be impaired by the passage of time." *McEntire v*. *Malloy*, 288 Ark. 582, 707 S.W.2d 773 (1986).

It strains credulity to find that somehow the claimant, Dr. Kelly, the claimant's bank, Sedgwick, and the hospital system for which Dr. Kelly worked have all lost, misplaced, or destroyed four years of the claimant's medical and billing records.

In relying on the claimant and Dr. Kelly's recollections, we are directly ignoring the instructions of our Supreme Court which instructs us to protect the respondents from defending an action so old that fact-finding is impaired. Without any documentary evidence whatsoever to prove the claimant actually received authorized medical treatment between 2008 and 2012, we must reach the most obvious result: The claimant did not obtain authorized treatment during that time. The claimant's self-serving testimony cannot overcome that conclusion.

If the claimant had received medical treatment during these four years, there would be billing records for this treatment. It defies logic to assume Dr. Kelly treated the claimant for four years and never billed the insurance carrier.

Accordingly, for the reasons set forth above, I must dissent.

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MICHAEL R. MAYTON, Commissioner