

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F706524

REBECCA DUNCAN, Employee

CLAIMANT

ELLIS PLUMBING, Uninsured Employer

RESPONDENT

OPINION FILED FEBRUARY 21, 2024

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant appearing *pro se*.

Respondent represented by CONRAD T. ODOM, Attorney, Springdale, Arkansas.

STATEMENT OF THE CASE

On January 31, 2024, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on December 13, 2023 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The prior opinions of January 22, 2008 and February 17, 2009 are final.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Statute of limitations.

2. Claimant's entitlement to permanent total disability benefits.

3. Payment of medical treatment.

The claimant contends she is permanently totally disabled as a result of her compensable injury. She also requests payment of medical treatment.

The respondent contends this case is barred by the statute of limitations. More than a year has passed since the payment in any form to the claimant or on her behalf. Furthermore, more than 10 years since the last award or Opinion which was filed on February 17, 2009. Claimant has not registered her claim with the Circuit Court and ask that it be recertified within the 10-year required period. That such a long period of time has gone on that respondent no longer has any documentation with regard to this file other than the court findings. The claimant's healing period has long since ended, has no objective findings and has long since been completed. Any current medical conditions that the claimant is being treated for are not related to the original compensable injury.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on December 13, 2023 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant's claim for additional compensation benefits is barred by the statute of limitations.

3. Claimant has failed to meet her burden of proving by a preponderance of

the evidence that respondent is liable for additional medical treatment or that she is permanently totally disabled as a result of her compensable injury.

FACTUAL BACKGROUND

The first hearing in this claim was conducted on December 20, 2007. In an Opinion filed January 22, 2008, this administrative law judge found that claimant had met her burden of proving by a preponderance of the evidence that she suffered compensable injuries to her cervical spine/upper back/left shoulder as a result of a motor vehicle accident on May 25, 2007. Claimant's condition was diagnosed as a cervical and upper thoracic strain with somatic dysfunction by Dr. Routsong. He ordered a cervical MRI scan which was interpreted as normal with no sign of nerve or spinal cord compression. Dr. Routsong's treatment consisted of medication, use of a TENS unit, and physical therapy. Dr. Routsong eventually referred claimant to Dr. Ennis, a pain specialist, who provided claimant a cervical steroid injection.

In addition to finding that claimant had proven a compensable injury, respondent was found to be liable for payment of all reasonable and necessary medical treatment for the compensable injuries as well as temporary total disability benefits from May 26, 2007 through a date yet to be determined.

A second hearing in this claim was conducted on January 21, 2009. Prior to the hearing the parties had stipulated that respondent had paid claimant temporary total disability benefits pursuant to the prior Opinion through November 26, 2007. The parties also stipulated that respondent owed claimant additional temporary total disability benefits

from November 27, 2007 through January 22, 2008, the date of the prior Opinion. At the hearing the parties agreed that this sum equaled \$3,306.00. At the time of the hearing the parties also agreed that respondent would pay certain medical bills submitted as Respondent's Exhibit #1 which totaled \$4,327.76. Since the time of the first hearing in December 2007, claimant had continued to treatment with Dr. Routsong who ordered an MRI scan of claimant's brain due to vertigo complaints. The MRI scan was interpreted as normal and he recommended that claimant continue treating with Dr. Ennis.

Claimant was eventually referred to Dr. Knox for a second opinion. After some additional diagnostic testing, Dr. Knox recommended that Dr. Ennis give claimant an injection at the C2-3 level. Claimant received that injection, but according to Dr. Knox's report of October 9, 2008, claimant received only 50% improvement after the injection. Dr. Knox noted that claimant would continue to treat with Dr. Ennis and that it might be necessary to consider a RF lesion and he also recommended physical therapy with a trial of surgical traction. On October 27, 2008, claimant returned to Dr. Routsong who noted that treatment had not been beneficial and that Dr. Ennis had recommended a spinal cord stimulator.

In an Opinion filed February 17, 2009, in addition to setting forth the amounts the parties had agreed that respondent owed to claimant, it was also found that claimant was entitled to additional temporary total disability benefits beginning January 23, 2008 and continuing through a date yet to be determined.

No further action was taken in this claim after the January 21, 2009 hearing until claimant requested a hearing by letter dated July 11, 2023, some fourteen years later. A pre-hearing conference was conducted on December 13, 2023, at which time claimant

contended that she is entitled to payment of permanent total disability benefits and payment for medical treatment. Respondent contends that the claim is barred by the statute of limitations.

ADJUDICATION

The initial issue for consideration involves respondent's contention that this claim is barred by the statute of limitations. Some compensation benefits have been paid to claimant as a result of this claim; therefore, her current claim is a claim for additional compensation. Pursuant to A.C.A. §11-9-702(b)(1), a claim for additional compensation is barred unless the claim is filed with the Commission within one year from the date of last payment of compensation or two years from the date of the injury, whichever is greater. Clearly, claimant's request for additional benefits by letter dated July 11, 2023, is more than two years after the date of injury on May 25, 2007.

I also find that more than one year has passed since the date of last payment of compensation. According to claimant's testimony, she received a payment of approximately \$15,000.00 after the last hearing in January 2009.

THE COURT: I thought you said he had paid \$15,000.00.

THE WITNESS: Yeah. That one payment, and that's it.

THE COURT: How long ago was that?

THE WITNESS: Right after the hearing.

Thus, it appears that the last payment of compensation in this case was made

shortly after the last hearing in January 2009, some fourteen years ago. Accordingly, I find that claimant's claim for additional compensation filed in July 2023 was not within one year from the date of last payment of compensation in 2009. Therefore, claimant's claim for additional compensation benefits is barred by the statute of limitations.

Even if it were to be determined that claimant's claim for additional benefits was not barred by the statute of limitations, I would nevertheless find that claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment or payment of permanent total disability benefits.

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. A.C.A. §11-9-508(a). Claimant has the burden of proving that she is entitled to additional medical treatment. *Dalton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Company v. Randall*, 12 Ark. App. 358, 676 S.W. 2d 750 (1984).

Here, at the time of the last hearing in January 2009, claimant was still receiving medical treatment for her compensable injury. However, claimant has submitted no medical records regarding any medical treatment she has received since the date of the last hearing. Therefore, it is impossible to determine whether claimant has received additional medical treatment for her compensable injury since that time and whether said medical treatment would be reasonable and necessary. In short, absent medical records subsequent to January 21, 2009, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that respondent is liable for any additional

medical treatment received subsequent to January 21, 2009.

Claimant also contends that she is permanently totally disabled as a result of her compensable injury. Claimant testified at the hearing that she has pain in her neck and that other than going to see the doctor every two months she does not leave the house. She testified that she is basically bedridden.

Pursuant to A.C.A. §11-9-519(e)(1) “permanent total disability” means inability because of compensable injury or occupational disease, to earn meaningful wages in the same or other employment. Furthermore, the burden of proof is on the employee to prove the inability to earn any meaningful wage in the same or other employment. A.C.A. §11-9-519(e)(2).

Here, as previously noted, claimant has submitted no medical records dated after the last hearing in January 2009. Specifically, there are no medical records indicating that claimant has been assigned an impairment rating by any of her treating physicians or that any restrictions have been placed upon her by her treating physicians with regard to her ability to work. Absent some medical records supporting her contention that she is permanently totally disabled, I find that claimant’s testimony alone is insufficient to prove that she is permanently totally disabled as a result of her compensable injury.

ORDER

Claimant’s claim for additional compensation benefits is barred by the statute of limitations. The last payment of compensation in this case occurred after the last hearing in January 2009. Claimant did not request a hearing on additional compensation benefits until July 2023, some fourteen years later. Furthermore, even if the claim were not barred

by the statute of limitations, claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment or that she is permanently totally disabled as a result of her compensable injury. Therefore, her claim for additional compensation benefits is hereby denied and dismissed.

Respondent is liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$162.00.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE