

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H202662

DAVID W. FERREN, EMPLOYEE

CLAIMANT

TOWNSELL & HILL, INC., EMPLOYER

RESPONDENT

**STONETRUST COMMERCIAL INS. CO.,
INSURANCE CARRIER**

RESPONDENT

**STONETRUST INSURANCE, THIRD PARTY
ADMINISTRATOR(TPA)**

RESPONDENT

OPINION FILED JUNE 27, 2023

Hearing held before Administrative Law Judge Chandra L. Black in Little Rock, Pulaski County, Arkansas.

The Claimant, pro se, unrepresented.

The Respondents represented by the Honorable Mr. Zachary F. Ryburn, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

On April 26, 2023, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing telephone conference was conducted on February 22, 2023, from which a Pre-hearing Order¹ was filed on that same day. A copy of said order and the parties' responsive filings have been marked as Commission's Exhibit No. 1 and made a part of the record without objection.

¹ It appears that I inadvertently omitted the Pre-hearing Order from the April 26, 2023, hearing transcript. Therefore, it has been blue-backed and merged into the hearing transcript by reference.

Stipulations

By agreement of the parties the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. That the employee-employer-carrier relationship existed at all relevant times including on or about September 22, 2019, when the Claimant allegedly sustained an injury to his right shoulder.
3. The parties will stipulate to the Claimant's average weekly wage (AWW) as well as the corresponding compensation rates later.
4. The Respondents have controverted this claim in its entirety.
5. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.
6. The Respondents have not paid any benefits on this claim.²

Issues

By agreement of the parties, the issues to be adjudicated at the hearing are as follows:

1. Whether this claim is barred by the statute of limitations.
2. Whether the Claimant sustained a compensable injury to his right shoulder.

² At the beginning of the hearing, the parties jointly agreed that the Respondents have not paid any benefits to or on behalf of the Claimant in this matter.

3. Whether the Claimant is entitled to medical treatment for his alleged injury.
4. Whether the Claimant is entitled to temporary total disability compensation from September 23, 2019 through a date yet to be determined.

Contentions

The parties' contentions are set forth below.

Claimant:

The Claimant contends that he sustained a compensable injury to his right shoulder on September 22, 2019. Per the Claimant's responsive filing, his injury occurred as follows: "While flagging for a crane operator, I was pulling the rig to clear the crane and he fell through a beam and tore his rotator cuff." He further contends that he is entitled to medical treatment and temporary total disability for his alleged shoulder injury.

Respondents:

The Respondents stated in their responsive filing, "The statute of limitations has run on this claim. The injury did not occur."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the Claimant and observe his 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. I hereby accept the above-mentioned proposed stipulations as fact.
3. Claimant has failed to prove by a preponderance of the evidence, that his claim was timely filed. Instead, the evidence preponderates that this claim for initial benefits is barred by the statute of limitations period set forth in Ark. Code Ann. §11-9-702 (Repl. 2012).
4. Because of the above findings/conclusions, the remaining issues— whether Claimant sustained a compensable injury to his shoulder by specific incident; whether he is entitled to reasonable and necessary medical treatment; and temporary total disability benefits —are moot due to the above finding and have not been addressed herein.

Summary of Evidence

During the hearing, the only witness to testify was the Claimant, Mr. David Wayne Ferren.

The record consists of the April 26, 2023 hearing transcript, comprising of the following exhibits: Specifically, Commission’s Exhibit No. 1 (the Prehearing Order has been blue-backed) includes the Commission’s Prehearing Order filed on February 22, 2023 and the parties’ responsive filings; Respondents’ Exhibit No. 1 is entitled Respondents’ Documentary Index, which consists of a cover sheet and six numbered pages.

Testimony

The Claimant, age 62, has a high school education. He has prior work experience as a carpenter for a construction company. The Claimant confirmed that he is alleging a work-related

injury to his shoulder. According to the Claimant, he reported his injury to Mr. Mitchell Gough, his boss.

Specifically, the Claimant offered the following account of his conversation with Mr. Gough:

MR. FERREN: I went down and told him – I told him I just fell, and I said, “I don’t know what I did but I can’t move my shoulder at all.” So he called Todd and reported it, and they were supposed to’ve made a accident report on the job.

The Claimant testified that Todd is the owner of Townsell & Hill/the respondent-employer. He confirmed that they did not offer him any medical treatment. The Claimant testified that he went to the doctor on his own, and they performed an X-ray of his shoulder. However, according to the Claimant, it did not reveal anything. The Claimant worked for the respondent-employer for fourteen months after his alleged injury, before losing his job.

Subsequently, the Claimant obtained an MRI of his shoulder approximately two years after the incident. However, the Claimant did not recall the exact date the MRI was performed. The Claimant verified that he is alleging an injury to his right shoulder. He denied any prior problems with his right shoulder or having sought any medical treatment for his shoulder before his alleged work-related incident. The Claimant last worked in March 2022. According to the Claimant, his employment was ended because he told a coworker he was not going to wear a harness anymore because it hurt his shoulder. The Claimant further explained that his coworker reported what he had said to Todd (Townsell), and he did not give him a chance to explain, he just fired him.

The Claimant admitted he filed a claim for an injury to his shoulder after he obtained the MRI. He confirmed having filed a Form AR-C with the Commission. The Claimant verified that he did not file a claim until two years after his injury. He was asked again if the Respondents ever paid on his claim, and his reply was, “Nope.” The Claimant used his personal health insurance that he obtained through the company (the respondent-employer) to pay for his medical treatment.

He confirmed that he did not file a claim for his shoulder condition until April 4, 2022. The Claimant verified that he filed a Form AR-C with the Commission at that time. He admitted that he signed the form on March 30, 2022. Next, the Claimant maintained that he filed a claim prior to April 4, by calling the Commission. Then, the Claimant stated that he does not know if he filed a claim before April 4, 2022.

On cross-examination, the Claimant was shown an intake form/clinic note from Unity Health/Searcy Medical Center. The Claimant obtained medical treatment from that facility on July 22, 2021. Per this form, the Claimant reported that he fell and hurt his shoulder at work about six years ago. However, the Claimant denied having an injury to his shoulder six years ago. The Claimant testified that the first time he went to the doctor was in 2019. He agreed that the form should read he had an injury a little over two years ago.

The Claimant confirmed that he fell between some rafters/a bottom beam and hurt his shoulder as he reported in his interrogatories. He further explained:

MR. FERREN: I loaded -- I flagged in a crane with a full bundle of plywood, and the choker turned up and I pulled on the choker to get it unplug, and when it broke loose, it made me stepped back and I stepped in the beam and landed right on my shoulder.

He confirmed that he drew unemployment benefits after the respondent-employer fired

him. The Claimant admitted that he filed a claim after he got the MRI done. According to the Claimant, it took him over four months to get approval for the MRI through his private health insurance.

Medical Evidence

There is only one medical record of evidence. On July 22, 2021, the Claimant sought medical treatment from Unity Health at Searcy Medical Center. Dr. Justin O. Franz evaluated the Claimant due to a chief complaints of right shoulder injury/pain. Per this clinic note, the Claimant underwent an MRI of the right shoulder on June 28, 2021, with an impression of, in relevant part: “A full thickness near full width tear of the supraspinatus...” Dr. Franz assessed the Claimant with “1. Localized primary osteoarthritis of right shoulder. 2. Chronic tear of rotator cuff tendon- unspecified rotator cuff tear or rupture of right shoulder, not specified as traumatic. 3. Nontraumatic rupture of right shoulder, not specified as traumatic.”

Adjudication

A. Statute of Limitations

The crucial issue for determination is whether the Claimant filed a timely claim for benefits with the Commission for his alleged September 22, 2019, right shoulder injury. The Claimant essentially alleges that he timely filed a claim for his alleged shoulder injury of September 22,

2019, for which he is entitled to associated benefits. Respondents contend that this claim is barred by the statute of limitations.

In that regard, Arkansas law limits the time in which a claim for compensation may be filed.

The relevant statute of limitations is set out in Ark. Code Ann. §11-9-702 (a) (1), which states in pertinent part:

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.

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 prove this, 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).

The Claimant admitted that he did not receive any type of payment for medical or indemnity benefits from the Respondents for his alleged shoulder injury of September 22, 2019. Moreover, the Claimant’s testimony is corroborated by the documentary evidence, and there is no

probative evidence to the contrary. In fact, the Claimant initially readily admitted that he did not file a claim for benefits until the filing of the Form AR-C, which occurred on April 4, 2022. I found this part of his testimony credible. However, the Claimant later denied that this was the first time he filed his claim. Instead, the Claimant maintained he filed a claim by calling the Commission. While such action does not constitute the filing of a claim, I must note that the Claimant has introduced no probative evidence to establish this statement. Of significance, the Claimant contradicted himself and gave conflicting and confusing testimony in this regard. I found the Claimant to be less than forthcoming in his assertion of having filed a claim before April 4, 2022. Nevertheless, the evidence before shows that the Claimant did not file a claim with the Commission for his alleged shoulder injury until April 4, 2022.

No benefits have been paid on this claim. Therefore, this is a claim for initial worker's compensation benefits. The Claimant's alleged date of injury for his right shoulder injury is September 22, 2019. Hence, the Claimant had until September 22, 2021, to file a claim with this Commission. However, the evidence before clearly demonstrates that the Claimant did not file a claim with this Commission until April 4, 2022, when he filed the Form AR-C. Hence, no probative evidence in the record indicates otherwise. This leads me to conclude that the filing of this claim is more than two years from the date of the alleged injury. Considering the foregoing, I am compelled to conclude that this claim is time-barred pursuant to the specified statute of limitations for a claim of initial benefits.

B. Remaining Issues

Because of the foregoing, the remaining issues—whether Claimant alleged that he sustained a compensable injury to his right by specific incident; whether he is entitled to reasonable and necessary medical treatment; and temporary total disability benefits—are moot and will not be addressed.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, this claim for initial workers' compensation benefits is barred by the statute of limitations. As such, this claim for benefits must be, and it hereby, respectfully denied and dismissed.

IT IS SO ORDERED.

**Honorable Chandra L. Black
Administrative Law Judge**