

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F802998

PAMULA MCCARLEY, Employee	CLAIMANT
SUPERIOR INDUSTRIES, Employer	RESPONDENT
ESIS, Carrier/TPA	RESPONDENT

OPINION FILED MARCH 18, 2022

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by ERIC NEWKIRK, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 17, 2022, the above captioned claim was submitted on the record. A pre-hearing conference was conducted on March 15, 2022, and a Pre-hearing Order was filed on that same date. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the blue-backed record without objection.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On March 1, 2007, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained compensable injuries to her upper extremities and bilateral shoulders on March 1, 2007.
4. The claimant is entitled to a weekly compensation rate of \$504.00 for temporary total disability and \$378.00 for permanent partial disability.
5. All previous opinions are final and the law of the case.

6. Based on the Full Commission Opinion filed March 11, 2016, respondents accepted and paid a 10% anatomical impairment to the claimant’s bilateral wrists as well as a 12% anatomical impairment to the body as a whole in connection with the claimant’s bilateral shoulders, along with the appropriate attorney’s fee.

By agreement of the parties at the pre-hearing conference the issue to be litigated at the hearing was limited to the following:

1. Whether the claimant’s claim for additional medical treatment is barred by the applicable Statute of Limitations.
2. Whether claimant is entitled to additional medical treatment in the form of bilateral shoulder surgery and treatment by Dr. Chris Arnold.

The claimant's contentions are as follows:

“Claimant contends she is entitled to additional medical treatment of her bilateral shoulders for her compensable injuries of March 2007 by Dr. Chris Arnold. Claimant contends the Statute of Limitations does not bar additional medical treatment. The claimant reserves all other issues.”

The respondents’ contentions are as follows:

“1. The Respondents contend that, as a threshold issue, the Statute of Limitations, as set forth by Arkansas Code Annotated §11-9-702(b)(1), bars the Claimant’s entitlement to any additional medical treatment. After all, the claimant’s injury was sustained on March 1, 2007, with a Form AR-C being filed on December 18, 2009, seeking a variety of benefits. Over the course of the next six years, various Commission proceedings were conducted and rulings rendered impacting the Claimant’s claims for indemnity and medical benefits which are all now final as to the law of the case.

2. More specifically, ESIS, Inc., took over the third-party administration of workers’ compensation benefits as of February 1, 2016, from Central Adjustment Company. The Full Commission’s award of permanent benefits to the claimant was rendered on March 11, 2016, and no appeal was made by the Respondents to the Arkansas Court of Appeals. Instead, the accrued permanent disability benefits as awarded/affirmed by the Full Commission along with the appropriate attorney’s fees were all issued to the Claimant and Evelyn Brooks on April 20, 2016. (See Documentary Exhibits attached hereto verifying those payments). No additional payments of any kind were made at any point to or on behalf of the Claimant by Respondents. Thus, the

Claimant’s claim for additional medical treatment as filed on September 15, 2021, is barred by the applicable Statute of Limitations since it was not within “one year of date of last payment of benefits.”

3. Alternatively, any further medical treatment is not reasonably necessary or otherwise related to the Claimant’s alleged underlying injuries.

4. To the extent somehow benefits of any kind are awarded, Respondents plead an offset for any group insurance payments made to or on behalf of the Claimant as well as an offset for unemployment benefits paid to the Claimant, to the extent allowed under Arkansas law.”

The claimant in this matter is a 60-year-old female who was employed by the respondent on March 1, 2007. On that date, the claimant suffered compensable injuries to her shoulders bilaterally and her upper extremities bilaterally. The parties have agreed to submit this matter on a stipulated record to the Commission. The claimant has asked the Commission to determine her right to additional medical treatment as recommended by Dr. Christopher Arnold. The respondent has alleged that the statute of limitations set forth in Arkansas Code Annotated §11-9-702(b) bars the claimant from receiving additional benefits.

I will first consider the issue of the statute of limitations. The records introduced into evidence through the November 30, 2021 hearing transcript and the March 17, 2022 stipulated record show that the respondent last paid the claimant benefits of any kind on April 20, 2016. The Full Commission’s award of permanent benefits to the claimant was rendered on March 11, 2016, and no appeal was made by the respondent to the Arkansas Court of Appeals. Instead, the accrued permanent disability benefits as affirmed by the Full Commission along with the appropriate attorney’s fee were all issued to the claimant and the claimant’s attorney on that April 20, 2016 date. No additional payments of any kind were made at any point to or on behalf of the claimant by the respondent. The claimant filed a claim seeking additional benefits on September 15, 2021. Arkansas Code Annotated §11-9-702(b) states:

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.

After a review of the evidence through the November 30, 2021 hearing transcript, the March 17, 2022 stipulated record, and the statute set forth above, I find that the claimant's claim is barred by the statute of limitations in this matter. As such, the claimant's claim for additional medical treatment is denied.

From a review of the record as a whole, to include documents and other matters properly before the Commission, 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 the pre-hearing conference conducted on March 15, 2022, and contained in a Pre-hearing Order filed that same date, as well as the March 17, 2022 stipulated record, are hereby accepted as fact.
2. The respondent has proven by a preponderance of the evidence that the claimant's case is barred by Arkansas Code Annotated §11-9-702(b).
3. The claimant has failed to prove by a preponderance of the evidence that she is entitled to the medical treatment as recommended by Dr. Arnold.

ORDER

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

IT IS SO ORDERED.

**ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**