

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G701936

FEDERICO MONTELONGO, Employee	CLAIMANT
TYSON POULTRY, INC., Employer	RESPONDENT #1
TYNET CORPORATION, Carrier/TPA	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED NOVEMBER 27, 2023

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL L. ELLIG, Attorney, Fort Smith, Arkansas.

Respondents represented by R. SCOTT ZUERKER, Attorney, Fort Smith, Arkansas.

Respondent #2 represented by CHRISTY L. KING, Attorney, Little Rock, Arkansas; although not participating in hearing.

STATEMENT OF THE CASE

On November 13, 2023, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on September 27, 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. All prior opinions are final.

3. Respondent #1 has accepted and paid permanent partial disability benefits based upon a 37% rating to the leg below the hip.

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

1. Claimant's entitlement to additional medical treatment for his compensable right knee injury.

2. Statute of limitations.

The claimant contends he requires additional medical treatment for his compensable right knee injury.

Respondent #1 contends that all appropriate benefits have been paid. Respondent #1 raises the statute of limitations as a defense.

Respondent #2 did not participate in the conference and waived its right to appear at the hearing.

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 his 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 September 27, 2023 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant's claim for additional medical treatment is barred by the statute of limitations.

## FACTUAL BACKGROUND

The claimant is a 63-year-old man who suffered a compensable injury to his right knee in September 2016. Claimant's primary medical provider for his right knee has been Dr. Sidani whose treatment included a right total knee arthroplasty in 2020.

On June 10, 2021, claimant was evaluated by Dr. Sidani and his report indicates that this evaluation was one and a half years after claimant's right knee arthroplasty and that although claimant was having some pain and weakness in his knee he was much better than before surgery. His examination showed no obvious effusion; full range of motion; slight laxity at mid flexion, but no instability; balanced ligaments; and normal tracking of the patella. Dr. Sidani also noted that claimant's x-rays showed a good position and alignment of his right knee prosthesis. There were no signs of loosening or failure. Dr. Sidani noted that claimant was doing well and had very little, if any, instability. Dr. Sidani indicated that he and claimant discussed the possibility of the use of a brace, but claimant stated that his knee did not bother him enough to wear a brace. Dr. Sidani recommended continued observation, full duty work and follow up as needed.

Claimant returned to Dr. Sidani on November 16, 2021 with right knee pain. Dr. Sidani noted that over the last two weeks claimant began having some stabbing pain in the medial side of his knee. Dr. Sidani diagnosed claimant with an MCL sprain and recommended a home exercise program and the use of a knee brace while working. Claimant returned to Dr. Sidani on December 20, 2021, and stated that his knee was much better. Dr. Sidani's examination showed a full range of motion without effusion. Dr. Sidani stated:

Right MCL sprain, status post total knee arthroplasty. I feel it is healed. It shows no instability. Good strength, full range of motion. We will release from our care today and for this injury according the AMA Guidelines qualifies for 0% additional disability for his right total knee arthroplasty.

Claimant did not return to Dr. Sidani for any right knee problems until August 15, 2023, when he was evaluated for right knee pain. Dr. Sidani gave claimant an injection on that date and prescribed anti-inflammatories and physical therapy.

Respondent has not accepted liability for the additional medical treatment provided by Dr. Sidani on August 15, 2023. As a result, claimant has filed this claim contending that he is entitled to additional medical treatment for his compensable right knee injury.

### ADJUDICATION

Claimant contends that he is entitled to additional medical treatment for his compensable right knee injury. Respondent contends that claimant's claim for additional medical treatment is barred by the statute of limitations.

The time limitation for requesting additional compensation benefits is codified at A.C.A. §11-9-702(b)(1) which 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.

Claimant has the burden of proving by a preponderance of the evidence that he acted within the time allowed for filing a claim for additional compensation. *Kent v. Single*

*Source Transp., Inc.*, 103 Ark. App. 151, 287 S.W. 3d 619 (2008).

It is the furnishing of medical services, not the payment therefor, which constitutes payment of compensation. *Heflin v. Pepsi Cola Bottling Company*, 244 Ark. 195, 198, 424 S.W. 2d 365, 367 (1968). Claimant is “compensated” by the furnishing of medical services and not by the payment of the charges therefore. *Id.*; see also *Plante v. Tyson Foods, Inc.*, 319 Ark. 126, 129, 890 S.W. 2d 253, 255 (1994).

In this particular case, respondent submitted payment records indicating that it last paid compensation for the medical treatment claimant received from Dr. Sidani on December 20, 2021. Therefore, claimant had one year from December 20, 2021, to file a claim for additional compensation benefits. The parties have agreed that claimant did not file an AR-C requesting additional compensation benefits but that claimant requested a hearing for additional benefits by letter dated August 23, 2023. Clearly, this letter requesting additional compensation benefits was more than one year from the date of last payment of compensation on December 20, 2021. Therefore, more than one year passed from the last payment of compensation on December 20, 2021 until the request for additional compensation benefits on August 23, 2023 and pursuant to A.C.A. §11-9-702(b)(1), this claim for additional compensation benefits is barred.

In reaching this decision, I note that the documentary evidence does contain numerous medical records from Dr. Sidani regarding his treatment for parts of his body which did not include his right knee. Claimant has acknowledged that during those visits Dr. Sidani did not treat his right knee. Accordingly, there is no question that claimant did not seek any additional medical treatment for his right knee from December 20, 2021 until August 15, 2023.

ORDER

Claimant's claim for additional compensation benefits is barred by the statute of limitations. Claimant's request for additional compensation was not filed until August 23, 2023. This was more than one year from the date of last payment of compensation which occurred on December 20, 2021, for medical treatment provided by Dr. Sidani. Accordingly, claimant's claim for additional compensation benefits is hereby denied and dismissed.

Respondent is responsible for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$224.30.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE