

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G806604

DONALD ROBERTSON,
EMPLOYEE

CLAIMANT

SPA CONSTRUCTION COMPANY, INC.,
EMPLOYER

RESPONDENT

BITCO INSURANCE COMPANY,
INSURANCE CARRIER/TPA

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL
DISABILITY TRUST FUND

RESPONDENT NO. 2

OPINION FILED JULY 27, 2022

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

Claimant represented by the HONORABLE JAMES R. BAXTER, Attorney at Law, Benton, Arkansas.

Respondents No. 1 represented by the HONORABLE JASON M. RYBURN, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE CHRISTY L. KING, Attorney at Law, Little Rock, Arkansas

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed January 19, 2022. The administrative law judge found that the statute of limitations barred the claim. After reviewing the entire record *de novo*, the Full Commission finds that the statute of limitations does not bar the claim for benefits.

I. HISTORY

The record indicates that the claimant became employed with Respondent No. 1, Spa Construction Company, Inc., in February 2014. The parties stipulated that “the employer/employee/carrier-TPA relationship existed with the claimant at all relevant times, including September 24, 2018, the date of the claimant’s alleged injury.” A “WORKERS’ COMPENSATION – FIRST REPORT OF INJURY OR ILLNESS” was prepared on or about September 28, 2018. The FIRST REPORT OF INJURY indicated that the date of injury was September 24, 2018, “Employee in insd shop & fell & hit head.” The FIRST REPORT indicated that the DATE DISABILITY BEGAN was September 25, 2018. The Commission received the FIRST REPORT OF INJURY on October 1, 2018 and the claim number G806604 was assigned.

The claimant signed a Form AR-N, Employee’s Notice Of Injury, on October 1, 2018. The Accident Information section of the Form AR-N indicated that the date of accident was September 24, 2018, “Turned to walk & triped (sic) over matt (sic) that was left laying in the middle of the floor.”

A Claims Representative for the respondent-carrier informed the claimant on October 10, 2018, “We have completed our investigation of your Workers’ Compensation claim. Unfortunately, we are denying your

claim and cannot make any voluntary payments at this time. Should you have any questions, please feel free to contact us.”

The claimant corresponded with the Arkansas Workers’ Compensation Commission on September 7, 2020:

DEAR KATRINA,
I’m writing to inform you that I would like to appeal your decision to deny my Workers’ Compensation claim.

The claimant’s September 7, 2020 letter included the information, “CONSTRUCTION ACCIDENT DATE: 9/24/2018,” and “CASE NUMBER: 806604.” The September 7, 2020 letter was filed with the Clerk of the Arkansas Workers’ Compensation Commission on September 11, 2020.

Catherine Richart, a Legal Advisor with the Workers’ Compensation Commission, corresponded with the respondent-carrier’s Claims Representative on September 23, 2020:

The Arkansas Workers’ Compensation Commission received Claimant’s request for a hearing. A copy of Mr. Robertson’s request and Legal Advisor Claimant Questionnaire is enclosed for your file. In order to process this request, I need for you to complete and return the enclosed Preliminary Notice to that I may know whether mandatory mediation is in order or whether a Legal Advisor telephone conference might be possible. Please note that a hearing **has** been requested should either conference not resolve the current dispute. I have enclosed a Preliminary Notice for your convenience in responding. If we do not receive the completed notice by **October 8, 2020**, the file will be forwarded to the Clerk’s office for assignment to an Administrative Law Judge. Please call the Legal Advisor Division if you have any questions about this letter or about mediation in general....

The Legal Advisor's September 23, 2020 correspondence included the caption "Donald Robertson v. Spa Construction Company Inc. AWCC File No: G806604."

A pre-hearing order was filed on December 3, 2021. According to the text of the pre-hearing order, the claimant contended, "The claimant contends this claim is not barred by the applicable S/L. He contends that on September 24, 2018, he tripped over a portable matt (sic) and hit his left shoulder and the left part of his head (sic) on a cherry picker. He contends this incident caused him to sustain a detached retina; and that he is entitled to all appropriate medical and indemnity benefits, and an attorney's fee (if he retains an attorney in this matter). The claimant reserves any and all other issues for future litigation and/or determination."

The parties stipulated that Respondent No. 1 "controverts this claim in its entirety." Respondent No. 1 contended that the claim was "barred by the applicable S/L. Respondent No. 1 controverts this claim in its entirety, and specifically reserves any and all other issues for future litigation and/or determination."

Respondent No. 2, Death & Permanent Total Disability Trust Fund, contended, "Respondent No. 2 contends this claim is barred by the applicable S/L. Respondent No. 2 reserves the right to plead further upon the completion of necessary investigation and/or discovery. Furthermore,

Respondent No. 2 reserves any and all other issues for future litigation and/or determination.”

The parties agreed to litigate the following issues:

1. Whether this claim is barred by the applicable S/L.
2. The parties specifically reserve any and all other issues not specifically addressed herein, including but not limited to a hearing on the merits, for future litigation and/or determination.

According to the pre-hearing order, the parties agreed to file briefs “in lieu of a hearing on the sole issue of the applicability of the statute of limitations[.]”

An administrative law judge filed an opinion on January 19, 2022. The administrative law judge found, among other things, that the statute of limitations barred the claim. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-702(Repl. 2012) provides, in pertinent part:

- (a) TIME FOR FILING.
 - (1) 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. For purposes of this section, the date of the compensable injury shall be defined as the date an injury is caused by an accident as set forth in §11-9-102(4).

An administrative law judge found in the present matter, “4. The claimant’s claim for both medical and indemnity benefits for his alleged detached retina injury of September 24, 2018, is barred by the applicable statute of limitations of **Ark. Code Ann.** Section 11-9-702(a)(1).” The Full Commission does not affirm the administrative law judge’s finding.

The parties stipulated that the employment relationship existed at all pertinent times, and that the claimant sustained an alleged compensable injury on September 24, 2018. A “WORKERS’ COMPENSATION – FIRST REPORT OF INJURY OR ILLNESS” was prepared on or about September 28, 2018. The “FIRST REPORT OF INJURY” indicated that the claimant had sustained an accidental injury on September 24, 2018. The claimant signed a Form AR-N, Employee’s Notice Of Injury, on October 1, 2018. It was reported on the Form AR-N that the claimant had sustained an accidental injury on September 24, 2018. However, a Claims Representative informed the claimant on October 10, 2018 that the respondent-carrier was “denying your claim and cannot make any voluntary payments at this time.”

The record therefore indicates that the present claim is for “initial” benefits in accordance with Ark. Code Ann. §11-9-702(a)(1)(Repl. 2012). The claimant corresponded with the Arkansas Workers’ Compensation Commission on September 7, 2020 and notified “Katrina,” “I’m writing to

inform you that I would like to appeal your decision to deny my Workers' Compensation Claim." The September 7, 2020 correspondence included the claimant's case number, 806604, and the correspondence was filed with the Clerk of the Commission on September 11, 2020. Catherine Richart, a Commission Legal Advisor, informed the respondent-carrier on September 23, 2020, "The Arkansas Workers' Compensation Commission received Claimant's *request for a hearing* [emphasis supplied]."

The parties stipulated that the claimant sustained an alleged compensable injury on September 24, 2018. Since the respondents paid no benefits, the statute of limitations would expire on September 24, 2020. See Ark. Code Ann. §11-9-702(a)(1)(Repl. 2012). The Full Commission finds that the claimant's September 7, 2020 correspondence, which included the claimant's claim number and was treated as a request for a hearing, toll the two-year statute of limitations. The claimant's September 7, 2020 correspondence implicitly indicates that the claimant had communicated with the Commission's Legal Advisor, Catherine Richart, and mistakenly referred to her as "Katrina." The Full Commission finds that the facts of the present matter are analogous to those occurring in *Ark. Dept. of Health v. Lockhart*, 2020 Ark. App. 166, 594 S.W.3d 924. The claimant in *Lockhart* sent a timely letter to the Commission requesting benefits related to a workplace injury. The letter in *Lockhart* set out a

Commission claim number, referenced a denial of benefits, and requested a hearing. Likewise, in the present matter the claimant's September 7, 2020 letter set out a Commission claim number and referenced a denial of benefits. The claimant's timely correspondence was also treated as a request for a hearing and the respondents were notified of same. There is no requirement that an employee use a designated claim form. *Lockhart, supra*. Just as in *Lockhart*, the claimant in the present matter was clearly under the impression, based on communication and correspondence with a Commission Legal Advisor, that he had taken the appropriate action to preserve his claim. We do not find the present case comparable to *Wal-Mart Associates, Inc. v. Armstrong*, 2017 Ark. App. 175, 516 S.W.3d 310. The Court of Appeals in *Armstrong* interpreted application of Ark. Code Ann. §11-9-702(b)(1)(Repl. 2012) rather than the statute applicable in the present matter, Ark. Code Ann. §11-9-702(a)(1). The Court held in *Armstrong* that a claimant's Form AR-C was a "generic" filing which was "equivalent to no finding at all." The Full Commission finds in the present matter that the claimant's September 7, 2020 correspondence was timely filed and was not "generic."

After reviewing the entire record *de novo*, the Full Commission finds that the applicable statute of limitations does not bar the claim for benefits. We find that the claimant filed a timely claim for benefits in accordance with

Ark. Code Ann. §11-9-702(a)(1)(Repl. 2012). The Full Commission therefore remands this matter to the administrative law judge for adjudication of compensability, temporary total disability benefits, permanent partial disability benefits, reasonably necessary medical treatment, and fees for legal services.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

For the reasons set out below, I respectfully dissent from the majority.

Arkansas Department of Health v. Lockhart, 2020 Ark. App. 166, 594 S.W.3d 924, did not change the legal requirements for tolling the statute of limitations and is based on facts that are not present in this case.

In *Lockhart*, the claimant filed a letter with the Commission asking for “a hearing seeking TTD benefits [setting out the dates of his injury and the date through which the claimant felt his TTD period ended], and for any impairment related to his neck and spinal cord.” *Lockhart v. Ark. Dep’t of*

Health, AWCC No. G309119 (Opinion filed November 16, 2018). In response to Lockhart's letter, a legal advisor sent him a "Legal Advisor Questionnaire," and, when Lockhart failed to return the questionnaire, the legal advisor sent a letter advising that his claim was being returned to the Commission's open general files. Eventually, the respondents argued that Lockhart failed to file his claim within the two-year statute of limitations. The Commission found that Lockhart's letter, which again, set out the specific relief he was seeking and identified the specific parts of his body he alleged were injured, was sufficient to toll the statute of limitations. The respondent appealed.

On appeal, the Court of Appeals held that the Commission's finding was supported by substantial evidence because reasonable minds could have reached the same conclusion as the Commission. *This standard of review applied by the Court of Appeals is important.*

In *Wal-Mart Assocs. v. Armstrong*, 2017 Ark. App. 175, 516 S.W.3d 310, the Court of Appeals addressed whether the filing of a Form AR-C that lacks specific information about the claim can toll the statute of limitations. There, Armstrong's AR-C Form was filed timely, but it did not list any specific injury to any part of her body and, with regard to the type of benefits sought, Armstrong checked all the boxes available. The Commission found that the Form AR-C was sufficient to toll the statute of limitations. The

Court of Appeals, however, held that it is error as a matter of law to allow such an ambiguous and generic filing toll the statute of limitations.

Such a generic filing is the equivalent to no filing at all. It simply provides no information about the type of claim being asserted by the claimant. To allow such a generic filing to toll the limitations period indefinitely for some unspecified injury is contrary to the plain language of the statute and to the rational of our prior caselaw. As such, we hold, as a matter of law, the generic Form AR-C filed in this case was not sufficient to toll the statute of limitations.

Wal-Mart Assocs. v. Armstrong, 2017 Ark. App. 175, at 6, 516 S.W.3d 310, 313-14.

Thus, we have two cases that address the same issue we face here: whether a filing is sufficient to toll the statute of limitations. In *Lockhart*, the Court of Appeals held that reasonable minds could have reached the same conclusion as the Commission—that Lockhart’s letter requesting a hearing and setting out the specifics of his claim was sufficient to toll the statute of limitations. In *Armstrong*, the Court of Appeals held that it was error as a matter of law to find that the statute of limitations is tolled by a filing that lacks specific information setting out the relief sought in a claim.

Here, Claimant sent a letter to the Commission’s PO Box that read in its entirety, “Dear Katrina, I’m writing to inform you that I would like to appeal your decision to deny my Workers’ Compensation claim.” It is tempting to speculate that Claimant intended this letter to reach the legal advisor he had been talking to on the telephone (Catherine), but it is just as

tempting (as the ALJ noted) to speculate that Claimant intended the letter to reach Respondents' insurance representative. Because legal advisors do not deny claims (nor do they grant them), it seems the latter is perhaps more reasonable than the former. Either way, we should avoid such speculation.

But even assuming that Claimant intended to send the letter to the legal advisor, it lacks more than just the formal rigmarole found on a prescribed form. It does not identify the date of the injury, the nature of the injury, the benefits sought, or any of the relevant information to put the Commission or anyone else on notice what relief he seeks. Claimant's letter is more like Armstrong's ambiguous and generic Form AR-C and thus, does not toll the statute of limitations. Accordingly, I respectfully dissent.

CHRISTOPHER L. PALMER, Commissioner