

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G305617**

**RAPHAEL J. GUNDERMAN,  
EMPLOYEE**

**CLAIMANT**

**CITY OF CABOT,  
EMPLOYER**

**RESPONDENT**

**ARK. MUNICIPAL LEAGUE SELF-INSURED  
WORKERS' COMPENSATION PROGRAM/  
ARK. MUNICIPAL LEAGUE  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED OCTOBER 4, 2024**

Hearing conducted on Wednesday, October 2, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas, 72203.

The claimant, Mr. Raphael J. Gunderman, of Cabot, Lonoke County, Arkansas, appeared pro se.

The respondents were represented by the Honorable Mary K. Edwards, attorney at law, Arkansas Municipal League, Little Rock, Pulaski County, Arkansas.

**INTRODUCTION**

In the prehearing order filed September 13, 2024, the parties agreed to the following stipulations, which they modified and affirmed on the record at the hearing:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.
2. The employer/employee/carrier-TPA relationship existed at all relevant times including July 17, 2013, when the claimant sustained an admittedly compensable injury to his right ankle/right foot for which the respondents paid medical and indemnity benefits.
3. The claimant's average weekly wage (AWW) was \$657.20, which is sufficient to entitle him to weekly compensation rates of \$438.00 for temporary total disability

*Raphael J. Gunderman, AWCC No. G305617*

(TTD), and \$329.00 for permanent partial disability (PPD) benefits.

4. The respondents last paid TTD benefits on March 6, 2024, and last paid medical benefits on July 29, 2024.
5. The respondents have controverted this claim for additional TTD benefits in its entirety.
6. The parties specifically reserve any and all other issues for future determination and/or litigation.

The parties agreed to correct and/or modify Stipulation No. 4 above to reflect the respondents last paid medical benefits on August 8, 2024. (Commission Exhibit 1 at 2; Hearing Transcript).

Pursuant to the parties' mutual agreement the issues to be litigated at the hearing were:

1. Whether the claimant's request for additional benefits is barred by the applicable statute of limitations (S/L) of *Ark. Code Ann.* § 11-9-702 (2024 Lexis Replacement).
2. If the claimant's request for additional TTD benefits is *not* barred by the applicable S/L, whether and to what extent the claimant is entitled to additional TTD benefits.
3. *If* the claimant hires an attorney to represent him in this claim, whether and what extent the claimant's attorney is entitled to a controverted fee on these facts.

(Comms'n Ex. 1 at 2-3; Hearing Tr.). The claimant also agreed on the record that the respondents' contentions his claim for additional medical and TTD benefits was in fact barred by the applicable S/L.

The hearing record consists of the hearing transcript, as well as any and all exhibits contained therein and/or attached thereto.

**STATEMENT OF THE CASE**

In the prehearing order filed September 13, 2024, the claimant had contended the applicable S/L did not bar his request for additional medical or TTD benefits. He had further contended he was entitled to additional TTD benefits from on or about March 7, 2024, through a date yet to be determined. However, at the outset of the hearing in his initial comments on the record wherein he stated his position at the hearing, the claimant advised the ALJ he now agreed with the respondents the S/L had in fact run and, therefore, he had decided to concede the applicable S/L barred his claim for any additional medical or TTD benefits. Finally, the claimant advised on the record at the hearing he was in fact receiving medical treatment on his right foot and ankle from time to time, and he had private health insurance which had been paying for his medical treatment. (Comms'n Ex. 1 at 3; Hearing Tr.).

Of course, the respondents had contended the claimant is not entitled to any additional medical or TTD benefits. On December 18, 2015, the claimant filed a Form AR-C for additional benefits with the Commission; however, on the Form AR-C the claimant only checked the boxes indicating he was requesting PPD benefits, mileage, and out-of-pocket expenses, and he specifically failed to indicate or state he was requesting additional TTD or medical benefits. Consequently, the respondents contended that as their indemnity payment log demonstrates, there have been gaps in the request for and payment of TTD benefits during the period from 2014-2015, and from 2015-2022. The respondents further contended, as their medical expenses payment log indicates, there also have been gaps in the claimant's medical treatment from 2017-2019. Therefore, they contended the applicable S/L ran on August 24, 2018, which they corrected and

*Raphael J. Gunderman, AWCC No. G305617*

modified on the record at the hearing to contend the S/L ran as of November 29, 2018. (Comms'n Ex. 1 at 3; Hearing Tr.)

Finally, the respondents contended they do not owe any additional TTD or medical benefits. While the respondents acknowledged they continued to pay for medical treatment and TTD benefits after the date the applicable S/L ran, they emphasized they are not asking for the claimant to repay those benefits. The respondents cited the Arkansas Court of Appeals holding in *Slaughter v. City of Fayetteville*, 2022 Ark. App. 139; 643 S.W.3d 809 (Ark. App. 2022), for the proposition that even if a respondent continues to pay benefits after the date the S/L runs, this fact “does not revive the statute of limitations on a claim that has already run.” *Slaughter*, 2022 Ark. App. At 137; 643 S.W.3d at 814. In addition, the respondents contend that any additional medical treatment the claimant has received is not related to nor reasonably necessary in light of his July 17, 2013, compensable right ankle/right foot injury. Finally, the respondents reserved the right to file an Amended Response to the Prehearing Questionnaire or other appropriate pleading and to allege any further affirmative defense(s) that might be available upon the completion of any and all further investigation and/or discovery. (Comms'n Ex. 1 at 3-4; Hearing Tr.).

At the hearing, after the claimant conceded the applicable S/L barred his claim for additional medical and TTD benefits the respondents' attorney made a motion this claim should be dismissed with prejudice. The claimant stated he did not object to the respondents' motion and, therefore, the ALJ granted it. (Hearing Tr.)

### **DISCUSSION**

The applicable S/L of *Ark. Code Ann.* Section 11-9-702(b)(1) (2024 Lexis Replacement)

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.

In addition, as our court of appeals held in *Slaughter, supra*, it is well-settled in Arkansas workers' compensation law that the fact a respondent inadvertently pays medical and/or indemnity benefits after the date the applicable S/L has run does not serve to resurrect a claim that is otherwise barred by the S/L.

The totality of the credible evidence of record herein – including but not limited to the claimant's candid, sincere recognition and admission of the fact his claim is barred by the applicable S/L of *Ark. Code Ann.* Section 11-9-702(b)(1) – conclusively demonstrates his claim for additional medical and TTD benefits is so barred. Moreover, the totality of the credible evidence of record conclusively demonstrates this claim for additional medical and TTD benefits should be dismissed with prejudice pursuant to the respondents' oral motion made at the hearing, to which the claimant expressly stated he had no objection. (Hearing Tr.; Respondents' Exhibit 1; Respondents' Exhibit 2).

Therefore, for all the aforementioned reasons I hereby make the following:

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The stipulations to which the parties agreed in the prehearing order filed September 13, 2024, which the parties' corrected and modified on the record at

the hearing, hereby are accepted as facts.

2. The claimant voluntarily and of his own accord, and in the absence of any duress or coercion whatsoever, honestly and sincerely conceded his claim for additional medical and TTD benefits herein is barred by the applicable S/L of *Ark. Code Ann.* Section 11-9-702(b)(1). Therefore, consistent with the applicable law, the claim is so barred.
3. The claimant's claim for additional medical and TTD benefits hereby is denied and dismissed with prejudice.

**IT IS SO ORDERED.**

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Mike Pickens  
Administrative Law Judge

MP/mp