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WORKERS' COMPENSATION—STATUTE OF LIMITATIONS ON SEEKING ADDITIONAL BENEFITS. *Mohawk Rubber Co. v. Thompson*, 265 Ark. 16, 576 S.W.2d 216 (1979).

Jerry Thompson, while employed by Mohawk Rubber Company, sustained a work-related injury to his foot on August 31, 1971. The injury was compensable under the Arkansas Workers' Compensation Act¹ and Thompson received temporary and permanent disability benefits until August 24, 1972. He was released from treatment and was furnished with a pair of orthopedic shoes on August 10, 1973. Mohawk's insurance carrier paid the last medical bill connected with Thompson's compensation award on December 13, 1973.

Despite the medical treatment described above, Thompson continued to suffer pain and discomfort from the original injury to his foot and subsequently underwent surgery. He filed a claim with the Arkansas Workers' Compensation Commission on May 27, 1975, for the cost of surgery and for temporary and permanent disability benefits. Mohawk controverted the claim, contending that the statute of limitations had run.² The employer argued that the words of the statute, "filed . . . within one [1] year from the date of the last payment of compensation"³ barred this claim. The Ar-

1. ARK. STAT. ANN. §§ 81-1301 to -1363 (1976).

2. ARK. STAT. ANN. § 81-1318(b) (1976) provides:

In cases where compensation for disability 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. The time limitations of this subsection shall not apply to claims for replacement of medicine, crutches, artificial limbs and other apparatus permanently or indefinitely required as the result of a compensable injury, where the employer or carrier previously furnished such medical supplies.

3. *Id.* Since this case turns upon the statute of limitations section, the chronological sequence of events is very important. For purposes of clarity, these are the dates which the court found to be pertinent:

Aug. 31, 1971 — Original injury.

Aug. 24, 1972 — Expiration of benefits.

Aug. 10, 1973 — Released from medical treatment and furnished with orthopedic shoes.

Nov. 8, 1973 — Carrier paid for shoes.

Dec. 13, 1973 — Carrier paid the physician's bill.

Aug. 28, 1974 — Second pair of orthopedic shoes was furnished.

May 27, 1975 — Claim for additional benefits was filed.

kansas Workers' Compensation Commission ruled the claim was not barred by the limitations period because the insurance carrier furnished a replacement pair of orthopedic shoes approximately nine months before the contested claim was filed. This action tolled the statute for Thompson's claim for additional compensation. The Commission awarded compensation and the decision was affirmed in circuit court. On appeal, the Arkansas Supreme Court reversed, holding that the furnishing of a replacement pair of orthopedic shoes did not toll the statute of limitations for the purpose of filing a claim for additional compensation. *Mohawk Rubber Co. v. Thompson*, 265 Ark. 16, 576 S.W.2d 216 (1979).

Workers' compensation statutes exist in every state and each act contains a statute of limitations.⁴ In addition, most statutes allow the claimant to reopen his case for the purpose of modifying his compensation award.⁵ This right is also controlled by some type of limitations period.⁶ The length of the period varies widely from state to state, ranging from the narrow view of limiting the filing period for additional claims to the duration of the original award,⁷ to a broader view that imposes no statutory time limit for reopening claims.⁸ Professor Larson, a leading scholar, prefers the latter approach and suggests that there should be perpetual and unlimited jurisdiction to reopen workers' compensation cases as often as necessary to insure that the worker's award is adequate for his current condition.⁹ Most states, including Arkansas, have rejected this idea.¹⁰ The Arkansas statute allows the worker to file

4. W. MALONE, *THE EMPLOYMENT RELATION* 461 (1974).

5. 3 A. LARSON, *THE LAW OF WORKMEN'S COMPENSATION* § 81.10 (1976). The need to modify a compensation award usually arises when the employee decides that his award is inadequate due to medical complications (*Blount v. Industrial Comm'n*, 19 Ariz. App. 245, 506 P.2d 285 (1973)), or when a latent injury is discovered (*Sanderson & Porter v. Crow*, 214 Ark. 416, 216 S.W.2d 796 (1949)), or when the claimant says that he was incapable of understanding the legal implications of the compensation award (*Cook v. Brown*, 246 Ark. 10, 436 S.W.2d 482 (1969)).

6. 3 A. LARSON, *THE LAW OF WORKMEN'S COMPENSATION* § 81.10 (1976).

7. Connecticut has adopted this view. *Id.* § 81.20.

8. Delaware, Georgia, Kentucky, Massachusetts, Minnesota, Nevada, North Dakota, and Utah have adopted this view. *Id.*

9. *Id.* § 81.10.

10. *Id.* This may be due to administrative difficulties. Larson suggests that the primary problem is that the state would be required to maintain extensive case records for indefinite periods. In addition, problems of proof would be encountered when adjudicating a case where the injury occurred many years before. The idea is opposed by insurance carriers because it would be very hard to determine the extent of future liabilities which the carrier might incur.

a claim for additional compensation if it is filed within two years from the date of the injury or one year from the date of the last payment of compensation made under the original award.¹¹

The Arkansas Supreme Court has interpreted the limitations section for additional claims on several occasions.¹² One common issue involves the term "payment of compensation."¹³ This requires the court to decide exactly what activities by the employer constitute a payment of compensation for purposes of tolling the statute.¹⁴ Many activities have qualified, ranging from a payment of medical expenses under a group hospitalization plan¹⁵ to an employer's voluntary payment for a routine medical examination.¹⁶ In *Ragon v. Great American Insurance Co.*,¹⁷ the court held that for purposes of computing attorneys' fees, the term "compensation" should be interpreted to encompass all the items contained in section 11 of the Workers' Compensation Act,¹⁸ which includes medical, surgical, hospital, and nursing services, plus medicine, crutches, artificial limbs and other apparatus. This ruling provided a more precise definition of compensation and also expanded the scope of activities by the employer which could be construed as compensation for the purpose of tolling the statute.¹⁹

Once a transaction has been characterized as a payment of compensation, the court is faced with a second issue concerning the "date of the last payment."²⁰ This requires the court to decide the appropriate date on which the last payment of compensation actually occurred.²¹ Some of these cases have been decided in the

11. ARK. STAT. ANN. § 81-1318(b) (1976) See note 2 *supra*.

12. *Id.* See cases listed in the annotation.

13. *Id.* See note 2 *supra*.

14. This issue was presented in *Mohawk Tire & Rubber Co. v. Brider*, 257 Ark. 587, 518 S.W.2d 499 (1975).

15. *Id.*

16. *Reynolds Metals Co. v. Brumley*, 226 Ark. 388, 290 S.W.2d 211 (1956).

17. 224 Ark. 387, 273 S.W.2d 524 (1954).

18. ARK. STAT. ANN. § 81-1311 (1976) provides in pertinent part: "Medical and hospital services and supplies. The employer shall promptly provide for an injured employee such medical, surgical, hospital, and nursing services, and medicine, crutches, artificial limbs and other apparatus as may be reasonably necessary for the treatment of the injury received by the employee."

19. See, e.g., *Heflin v. Pepsi Cola*, 244 Ark. 195, 424 S.W.2d 365 (1968); *Reynolds Metals Co. v. Brumley*, 226 Ark. 388, 391, 290 S.W.2d 211, 213 (1956).

20. See note 2 *supra*.

21. This issue was presented in *Southern Cotton Oil Co. v. Friar*, 247 Ark. 98, 444 S.W.2d 556 (1969); *Heflin v. Pepsi Cola*, 244 Ark. 195, 424 S.W.2d 365 (1968); and *Phillips v. Bray*, 234 Ark. 190, 351 S.W.2d 147 (1961).

claimant's favor even though they could have been technically barred by the limitations period.²² A claim for additional compensation will be rejected if it is clear that it was filed beyond the limitations period.²³ However, in accord with the general policy of liberally interpreting the statute,²⁴ the court has been willing to accept any reasonable argument by the claimant in determining the date of the last payment, and in some cases has accepted a late filing caused by administrative procedures beyond the claimant's control.²⁵

Despite this trend, the court rejected a claimant's attempt to lengthen the limitations period in *Heflin v. Pepsi Cola*.²⁶ In that case the court held that the limitations period began on the date that the medical services were furnished and not on the date when the insurance carrier actually paid for the medical services.²⁷ Professor Larson agrees with the Arkansas position. His reasoning is based on the idea that it is more logical to date the limitations period from the receipt of services by the claimant than from the receipt of payment by the doctor, since it is the relation between the employee and the employer that is significant.²⁸ The time when the employer or his insurance carrier actually pays the doctor's bill is a random element that could extend the period in a haphazard manner bearing no relation to the purpose of the claims period.²⁹

The Arkansas Legislature amended the statute of limitations section of the Workers' Compensation Act in 1968.³⁰ The amendment made two changes in the statute.³¹ One change was the addition of the following sentence which qualifies the limitations period for additional claims: "The time limitations of this subsection shall

22. *Aetna Cas. & Sur. Co. v. Jordan*, 234 Ark. 339, 352 S.W.2d 75 (1961); *Reynolds Metals Co. v. Brumley*, 226 Ark. 388, 290 S.W.2d 211 (1956).

23. *Industrial, Inc. v. Pierce*, 263 Ark. 11, 563 S.W.2d 1 (1978); *Phillips v. Bray*, 234 Ark. 190, 351 S.W.2d 147 (1961); *Key v. Arkansas Power & Light Co.*, 228 Ark. 585, 309 S.W.2d 190 (1958).

24. *Triebisch v. Athletic Mining & Smelting Co.*, 218 Ark. 379, 237 S.W.2d 26 (1951); *Stout Constr. Co. v. Wells*, 214 Ark. 741, 217 S.W.2d 841 (1949).

25. *Southern Cotton Oil Co. v. Friar*, 247 Ark. 98, 444 S.W.2d 556 (1969); *Jones Furniture Mfg. Co. v. Evans*, 244 Ark. 242, 424 S.W.2d 880 (1968). *Contra*, *Superior Fed. Sav. & Loan Ass'n v. Shelby*, 265 Ark. 599, 580 S.W.2d 201 (1979).

26. 244 Ark. 195, 424 S.W.2d 365 (1968).

27. *Id.* at 198, 424 S.W.2d at 367.

28. 3 A. LARSON, *THE LAW OF WORKMEN'S COMPENSATION* § 78.43(b) (1976).

29. *Id.*

30. 1968 Ark. Acts 1. (codified at ARK. STAT. ANN. § 81-1318(b) (1976)).

31. *Id.*

not apply to claims for replacement of medicine, crutches, artificial limbs, and other apparatus permanently or indefinitely required as the result of a compensable injury, where the employer or carrier previously furnished such medical supplies."³² This change may have resulted from the 1967 case of *Shelby Electric Co. v. Duran*.³³ In *Duran* the court held that an employee's claim for a replacement pair of orthopedic shoes was barred by statute³⁴ since the claim was filed one year and forty-four days after the last payment of the original award. Justice Smith and Justice Fogleman voted with the majority in *Duran*, but joined in a concurring opinion³⁵ in which they stated the result in *Duran* was inequitable. They believed that an injured worker should be entitled to replacement of apparatus (crutches, artificial limbs, etc.) which are needed as a result of an original compensable injury.³⁶ The justices stated that the purpose of the statute of limitations was to put "stale demands at rest,"³⁷ that this purpose was not fulfilled in this situation, and that a legislative change in the statute was needed to prevent similar results in the future.³⁸

In *Mohawk Rubber Co. v. Thompson* the court was required to decide the date of the last compensation payment of the original award. The court agreed with the employer's contention that the statute was tolled from the date the employee was released from medical treatment, not the date the insurance carrier paid for the medical services,³⁹ basing its decision on the *Heflin* case.⁴⁰ With this rule in mind, the court found there had been no tolling of the statute between August 10, 1973, when Thompson was released

32. See note 2 *supra*.

33. 243 Ark. 344, 419 S.W.2d 798 (1967).

34. See note 2 *supra*.

35. *Shelby Elec. Co. v. Duran*, 243 Ark. 344, 356, 419 S.W.2d 798, 800 (1967).

36. It should be noted that the claimant in *Duran* was not attempting to expand the amount or the scope of his award, but was only attempting to replace a part of his original award (a pair of orthopedic shoes) which had been worn out.

37. *Shelby Elec. Co. v. Duran*, 243 Ark. 344, 356, 419 S.W.2d 798, 800 (1967).

38. Since there is no set procedure for recording legislative history in Arkansas, it is hard to validate a connection between the *Duran* case and the 1968 amendment which followed it. However, the language of the Smith concurrence and the short time period between the 1967 *Duran* case and the 1968 amendment suggest that the legislature was influenced by Judge Smith's reasoning and in fact responded to his call for a legislative change. The concurrence ended with the following language: "In the circumstances the controlling statute might well be amended. This concurring opinion is intended merely to call the matter to the attention of the General Assembly." *Id.* at 347, 419 S.W.2d at 800.

39. *Mohawk Rubber Co. v. Thompson*, 265 Ark. 16, 18, 576 S.W.2d 216, 217 (1979).

40. *Heflin v. Pepsi Cola*, 244 Ark. 195, 197, 424 S.W.2d 365, 366 (1968).

from treatment, and August 28, 1974, when Thompson received a replacement pair of orthopedic shoes.⁴¹ The claim for additional compensation filed on May 27, 1975, was barred.⁴²

Secondly, the court had to determine what constituted "payment of compensation" in light of the 1968 amendment of the statute. The Arkansas Workers' Compensation Commission ruled that the statute of limitations for additional compensation was tolled when the employer furnished the second pair of orthopedic shoes on August 28, 1974,⁴³ basing its decision on the definition of compensation announced in the *Ragon* case.⁴⁴ Since orthopedic shoes fall within the *Ragon* definition, the Commission concluded that the furnishing of orthopedic shoes amounted to "payment of compensation." This would extend for one year the period in which the claimant could file a claim for additional benefits. Because Thompson underwent surgery and filed his claim within the one year period following the receipt of the replacement pair of orthopedic shoes, the Commission granted his request for additional compensation to cover the cost of the surgery.⁴⁵

The Arkansas Supreme Court found the *Ragon* decision was not controlling in *Mohawk*, and reversed the Commission's decision.⁴⁶ This ruling was based on the language added to section 18(b) of the Arkansas Workers' Compensation Act by the 1968 amendment.⁴⁷ The court reasoned that the manifest purpose of this amendment was to eliminate the statute of limitations requirement with respect to an employee's right to obtain the replacement of medicine, crutches, artificial limbs and other apparatus that would be indefinitely required as a result of a compensable injury.⁴⁸ After determining that this was the sole purpose for the amendment, the court held that the amendment was not intended to lengthen the limitations period for additional compensation.⁴⁹ Characterizing the 1968 amendment as being an exception to the basic limitations rule, the court found that the Commission had extended the scope of the exception beyond the defect that it was

41. *Mohawk Rubber Co. v. Thompson*, 265 Ark. 16, 18, 576 S.W.2d 216, 217 (1979).

42. Note 3 *supra* lists the pertinent dates in chronological order.

43. *Mohawk Rubber Co. v. Thompson*, 265 Ark. 16, 18, 576 S.W.2d 216, 217 (1979).

44. *Ragon v. Great Am. Ins. Co.*, 224 Ark. 387, 273 S.W.2d 524 (1954).

45. *Mohawk Rubber Co. v. Thompson*, 265 Ark. 16, 18, 576 S.W.2d 216, 217 (1979).

46. *Id.*

47. ARK. STAT. ANN. § 81-1318(b) (1976). *See note 2 supra.*

48. *Mohawk Rubber Co. v. Thompson*, 265 Ark. 16, 19, 576 S.W.2d 216, 217 (1979).

49. *Id.*

designed to correct.⁵⁰ The operation of the 1968 amendment was limited to claims for replacement materials and thus could not be used in conjunction with the *Ragon* definition of compensation to extend the statute of limitations period for a claim for additional compensation.⁵¹

The *Mohawk* decision provides the first judicial interpretation of the 1968 amendment to section 18(b) of the Workers' Compensation Act. The court defined the extent to which a claimant could use the 1968 amendment to extend the statute of limitations. For example, prior to the 1968 amendment, the claimant in *Mohawk* would have been unable to obtain the replacement orthopedic shoes on August 28, 1974, because more than a year had passed since he had been furnished medical services on August 10, 1973.⁵² Before the 1968 amendment, an injured worker was required to file a claim every year for the replacement apparatus needed as the result of a compensable injury. It was necessary for the claimant to do this even if that particular apparatus (crutch, artificial limb, orthopedic shoes, etc.) was still in good working order, because a failure to file a claim within one year would bar a claim which was filed, for example, three years later when an actual need arose. The 1968 amendment will prevent the reoccurrence of the inequitable result in *Duran*.⁵³

A strict application of the *Ragon* definition of compensation to the operation of the 1968 amendment would mean that a new period of limitations would begin to run each time the replacement material was provided. The practical effect of this reasoning would be to deny the defense of the statute of limitations to an employer who provides replacement materials. This is a result which the Arkansas Supreme Court would not allow.

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50. *Id.* at 19, 576 S.W.2d at 218.

51. *Id.* at 18, 576 S.W.2d at 217.

52. *Id.*

53. In his dissent, Justice Jones indicated that the statute as it appeared in 1967 should have entitled a worker to receive replacement crutches and other apparatus needed as a result of a compensable injury. Later in his opinion, he stated, "Certainly the furnishing of such apparatus by the employer should not toll the statute of limitations on a claim for additional compensation or for medical or hospital treatment . . ." *Shelby Elec. Co. v. Duran*, 243 Ark. 344, 347, 419 S.W.2d 798, 800 (1967). This comment is purely dictum, but appears to address a situation such as that presented in *Mohawk*.

