

MISSISSIPPI WORKERS' COMPENSATION COMMISSION

MWCC NO. 0302214-J-0465-B

DAVID BARRIER

CLAIMANT

VS

OMNOVA SOLUTIONS, INC. (SELF-INSURED)

EMPLOYER

Representing Claimant:

Al Chadick, Esquire, Kosciusko, MS

Representing Employer/Carrier:

Leland Smith, Esquire, Jackson, MS

FULL COMMISSION ORDER

This matter was heard by the Commission on September 17, 2012 pursuant to the Petition for Review filed by the Employer. In an Order issued on June 18, 2012, the Administrative Judge granted the Claimant's Motion to Reopen and reinstated the claim. The Employer contends that the Order of Administrative Judge is unsupported by and contrary to the evidence and the law. For the reasons stated below, we reverse the Order of Administrative Judge dated June 18, 2012, and we find that the Claimant's Motion to Reopen is hereby denied.

I.

First, we find that the Commission lacks jurisdiction over this claim pursuant to Miss. Code Ann. § 71-3-53, which states in pertinent part as follows:

Upon its own initiative or upon the application of any party in interest on the ground of a change in conditions or because of a mistake in a determination of fact, the commission may, at any time prior to one (1) year after date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one (1) year after the rejection of a claim, review a compensation case, issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation.

The Claimant previously settled this claim with the Employer and a third party, and the

Circuit Court of Lowndes County issued an Order Approving Third-Party Settlement on April 4, 2005. The Employer filed a Form B-31 Notice of Final Payment signed by the Claimant on May 2, 2005. The Claimant did not file his Motion to Reopen until March 16, 2012.

“The one-year statute of § 71-3-53 . . . operates elsewhere in conjunction with § 71-3-37(7), the Mississippi Workers’ Compensation Commission's Procedural Rule 17, and the Commission’s form B-31.” *Taylor v. Salvation Army-Pascagoula Corps*, 744 So. 2d 825, 827-28 (¶6) (Miss. Ct. App. 1999) Further, the Court stated:

Form B-31 (Report of Payment and Settlement Receipt) gives notice to the employee, as required by due process of law, that the employer considers its obligation at an end and that his/her rights to benefits may be lost if the matter remains dormant for the next year. Miss. Work. Comp. Procedural Rule 17. In other words, the statute begins running with its proper filing.

Id. at (¶ 8).

In this matter, the Employer filed a Form B-31 signed by the Claimant on May 2, 2005. The Claimant did not file this Motion to Reopen until March 16, 2012 nearly seven years later. We find that more than one-year has expired since the filing of the Employer’s B-31, and there is no evidence that any additional payment of benefits tolled the statute of limitations. Therefore, the Commission is without jurisdiction to reopen this matter.

II.

Even if the one-year statute had not expired, we find that the Claimant has failed to demonstrate a “mistake in a determination of fact” or a “change in conditions” to warrant the Commission reopening this matter pursuant to Miss. Code Ann. § 71-3-53.

In this case, the Claimant has not alleged either a mistake in determination of fact or a change in condition. “The kind of mistake that will warrant reopening is ordinarily a mistake on the part

of the fact[-]finder. . . .” *North Mississippi Medical Center v. Stevenson*, 12 So. 3d 1149, 1152 (¶10) (Miss. Ct. App. 2009). The Claimant has not alleged in his Motion to Reopen any mistake on the part of the fact-finder. Further, “A change in conditions is usually considered to mean a change in physical conditions due to the original injury which affects an employee’s earning capacity or ability to work.” *N. Miss. Med. Ctr. v. Henton*, 317 So. 2d 373, 375 (Miss.1975). Not only has the Claimant failed to show evidence of a change in physical conditions due to injury that affect his earning capacity or ability to work, the Claimant has failed to produce any evidence along with his Motion to Reopen.

Based on these above facts and law, the Claimant has failed to show any proper basis under Mississippi Code Annotated § 71-3-53 that would allow this claim to be reopened by the Commission.

III.

Further, even if the Commission still had jurisdiction over this matter, we would not find that the Claimant has demonstrated a need to reopen the claim because the Claimant has provided no evidence to the Commission to establish that the conditions of the settlement have been met to require additional payments to the Claimant by the Employer.

Under the terms of the Order Approving Third-Party Settlement, the Employer agreed to pay the Claimant \$25,000.00 to be set aside in a Medicare Set-Aside account (“MSA”). The Employer agreed that if the Claimant exhausted the \$25,000 set aside in the Claimant’s MSA account for future medical expenses, the employer may pay those future medical expenses contingent upon the Centers for Medicare and Medicaid Services (“CMS”) requiring additional money be placed into the Claimant’s MSA account. Further, the Order requires that the funds may only be used for medical

services related to the Claimant's work-related injury, and the Claimant is required to maintain summaries of the transactions and status of the account. The Order explicitly states, "These summaries are to include the date of each service, procedure performed, diagnosis and a receipt from the provider or a cancelled check." (Order Approving Third Party Settlement, April 4, 2005).

The Claimant has failed to present to the Commission any documentation from Medicare requiring additional funds to be placed in the Claimant's MSA. This is the first condition that must be met according to the settlement documents to potentially trigger any further obligation of the Employer. Additionally, the Claimant has failed to present any evidence to demonstrate that the initial \$25,000 has been exhausted, nor has the Claimant demonstrated that the initial \$25,000 has been exhausted exclusively on medical treatment related to his work-related injury.

Based on the lack of evidence presented to the Commission, we find that in the event Commission had jurisdiction over this matter, the Claimant's Motion to Reopen would be denied based on the merits as well.

IV.

Therefore, we reverse the Order of Administrative Judge dated June 18, 2012, and we find that the Claimant's Motion to Reopen is hereby denied.

SO ORDERED on NOV 21 2012

Alan Williams

John R. Jenkins
John M. Ricks

COMMISSIONERS

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ATTEST

Phyllis C. Clark

Phyllis Clark, Commission Secretary