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ARKANSAS COURT OF APPEALS

DIVISIONS II, III, AND IV

No. CV-17-488

WALTER FARRIS

APPELLANT

V.

EXPRESS SERVICES, INC. AND
NEW HAMPSHIRE INSURANCE
COMPANY

APPELLEES

Opinion Delivered: March 7, 2018

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO.G603170]

REVERSED AND REMANDED

MIKE MURPHY, Judge

Appellant Walter Farris appeals from the April 20, 2017 opinion of the Arkansas Workers' Compensation Commission (Commission) that found Farris's claim for additional benefits was barred by the statute of limitations. The Commission's opinion affirmed the opinion of the administrative law judge (ALJ). Farris's sole point on appeal is that his claim for additional benefits is not time-barred. We agree and reverse and remand

Farris was injured on the job on May 12, 2014, when a crane fell on him. His employer, Express Services, Inc., initially paid benefits for the injury claim. Farris received medical treatment until he was released to full duty on April 28, 2015.

Farris filed a Form AR-C for additional benefits on May 5, 2016. He incorrectly named Great Dane Trailers as the employer because he mistakenly believed that he worked for Great Dane Trailers since that was the physical location of his employment. In fact, he

worked for Express Services, Inc., a temporary-employment agency, but was assigned to Great Dane Trailers. Once he realized the mistake, he filed an amended form AR-C on May 13, 2016. The Commission affirmed and adopted the ALJ's decision that Farris's claim for additional benefits was barred by the statute of limitations. Farris timely appealed.

The only question on appeal is whether Farris's claim for additional benefits is time-barred because he mistakenly named the wrong employer in his otherwise timely filed claim.

Arkansas Code Annotated section 11-9-702(b)(1) governs the time for filing a claim for additional compensation:

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.

Thus, absent some action that tolled the statute of limitations, Farris's claim for additional compensation had to be filed within one year of April 28, 2015 (the date of the last receipt of medical benefits) or two years from May 12, 2014 (the date of injury). He filed the form AR-C for additional benefits naming the incorrect employer (Great Dane Trailers) on May 5, 2016.¹ He filed the amended form AR-C naming the correct employer (Express Services, Inc.) on May 13, 2016, one day after the statute of limitations had run.

¹Farris's initial claim for benefits, dated May 20, 2014, correctly named his employer as Express Services, Inc.

In *Dillard v. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (2004), our court considered whether a form that was timely filed but contained a mistake tolled the statute. The mistake in *Dillard* involved a claimant checking the wrong boxes to indicate the claim was for initial benefits when it should have indicated it was for additional benefits. Our court noted that it was obvious that the claimant intended to file a claim for additional benefits and that “despite the fact that the wrong boxes were checked . . . because it was timely filed, [the claim] tolls the statute of limitations.” *Id.*

The employer argues that it was Farris’s burden to file the form correctly and that he should have known his employer was Express Services, Inc., not Great Dane Trailers, because he submitted his timesheets to Express Services, Inc., and his paychecks were consistently issued by Express Services, Inc. However, our court has held that the determinative factor is the timeliness of filing of the form and that minor mistakes such as these will not subject the claim to dismissal as long as the initial form was filed before the date when the statute runs. *Id.*

While *Dillard* focuses solely on an incorrect checkmark for initial benefits, the underpinning of that case is that a “failure to technically comply with the ‘call’ of the form” should not be fatal to a claim when it is clear what was intended. *Id.* at 384, 192 S.W.3d at 291. Our court in *Dillard* emphasized that mistakes in a claim for additional benefits, especially given the fact that the employer had previously paid benefits to that employee, should not become a case of “form over substance” rendering a claim time-barred. *Id.*

Likewise, Farris's mistake in his claim form for additional benefits, especially given that Express Services, Inc., had previously paid benefits to him, is a mistake as to form and not as to substance. We hold that the statute of limitations was tolled.

Reversed and remanded.

VIRDEN, HARRISON, WHITEAKER, and BROWN, JJ., agree.

GRUBER, C.J., and GLADWIN, KLAPPENBACH, and GLOVER, JJ., dissent.

N. MARK KLAPPENBACH, Judge, dissenting. I would hold that the Commission's decision is supported by substantial evidence. I fail to see how *Dillard* supports a different result. *Dillard v. Benton Cty. Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (2004). The issue in that case was whether Dillard's timely filed claim for benefits was properly dismissed for lack of prosecution and failed to toll the statute of limitations for subsequently filed claims. This court examined whether Dillard's form requesting initial benefits could be treated as a claim for additional benefits, but we ultimately held that resolution of the appeal was not dependent on how the claim was classified.

Here, the issue is whether naming the wrong employer on a form requesting benefits is sufficient to toll the statute of limitations until a claim is filed naming the proper employer. Even though he had continued to work for Express after his injury, first at its offices and then at another assignment, and had continued to submit time-sheet information to, and receive paychecks from Express, Farris filed a claim for benefits against Great Dane, not Express. He checked all of the boxes requesting both initial benefits and additional benefits. The majority holds that filing a claim naming the wrong employer is a

“minor” mistake and a “mistake as to form” that will toll the statute of limitations. However, unlike in *Dillard*, Farris’s mistake was not merely a “failure to technically comply with the ‘call’ of the form” in an attempt to request additional benefits from Express; instead, he filed a claim requesting initial and additional benefits from a separate entity. It is unclear from the majority opinion for how long such a mistake will toll the statute of limitations or whether the wrongly named employer must be somehow related to the case. Would the majority’s decision be the same if Farris had identified a completely unrelated party as his employer or waited years to identify the proper party with no notice to Express? I fail to see how the majority can compare a mistake regarding initial benefits and additional benefits, as in *Dillard*, to claims against two different employers. A claim against a nonemployer does not toll the statute of limitations for a claim against the responsible employer. Therefore, I dissent.

Gruber, C.J., and Gladwin and Glover, JJ., join.

Goldberg & Dohan; by: *Andy L. Caldwell*, for appellant.

Worley, Wood & Parrish, P.A., by: *Melissa Wood*, for appellees.