FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-3326

SAMUEL PHILLIPS,

Appellant,

v.

TYSON FOODS (formerly IBP,
formerly Food Brands America,
formerly Doskocil Companies,
formerly Wilson Foods),

Appellee.

On appeal from an order of the Judge of Compensation Claims.
Nolan S. Winn, Judge.

Date of Accident: May 2, 1976.

November 20, 2019

RAY, C.J.

In this workers' compensation case, Samuel Phillips ("Claimant") appeals an order of the Judge of Compensation Claims ("JCC") denying his claims for benefits as barred by the statute of limitations. On the unique facts of this case, we reverse and remand for further proceedings.[1]

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[1] Based on the JCC's ruling that the statute of limitations bars

Claimant's compensable injury occurred more than 40 years ago. His employer administratively accepted Claimant as permanently and totally disabled (PTD) in 1986 and paid PTD benefits.[2] In 1987, the Division of Workers' Compensation began paying Claimant PTD supplemental benefits, as authorized by section 440.15(1)(f), Florida Statutes. *See Dep't of Children & Families v. Monroe*, 744 So. 2d 1163, 1164 (Fla. 1st DCA 1999) ("The purpose of supplemental benefits is to allow for increases in the cost of living."). For unknown reasons, when Claimant started receiving supplemental benefit payments from the Division, he stopped receiving PTD benefit payments from his employer.

In 2018, Claimant filed the first of several petitions for benefits seeking medical and disability benefits from 1986 "to the present and continuing." The JCC denied the petition, ruling the statute of limitations had run before the claims were filed. The JCC found that although the supplemental benefits are compensation, the statutory obligation to pay them rests with the Division, not the employer; therefore, the JCC concluded, those payments did not toll the statute of limitations. We disagree.

The statute of limitations applicable to Claimant is the version in effect on Claimant's date of accident. *Batista v. Publix Supermarkets, Inc.*, 993 So. 2d 570, 572 (Fla. 1st DCA 2008). That version provides as follows:

> The right to compensation for disability under this chapter shall be barred unless a claim therefor is filed within 2 years after the time of injury, *except that if payment of compensation has been made or remedial treatment has been furnished by the employer* without an

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Claimant's petitions for benefits, the JCC did not address—nor do we—the issue framed in the order as "whether the JCC has subject matter jurisdiction to determine if the workers' compensation liability of Wilson Foods passed through each of the mergers and/or acquisitions as well as the bankruptcy of Doskocil Companies so as to render Tyson Foods liable as Claimant's Employer."

[2] Claimant's entitlement to PTD benefits is not before us and we do not decide it now.

> award on account of such injury a claim may be filed within 2 years after the date of the last payment of compensation or after the date of the last remedial treatment furnished by the employer.

§ 440.19(1)(a), Fla. Stat. (1975) (emphasis added).

By its plain language, the statute is tolled by either (1) the payment of "compensation" or (2) the furnishing of remedial treatment by the employer. Supplemental benefits constitute compensation. *See Jackson v. Hochadel Roofing Co.*, 794 So. 2d 668, 671 (Fla. 1st DCA 2001) ("Although the supreme court has not decided the point, the First District has decided that supplemental benefits payable when an injured worker becomes entitled to permanent total disability benefits are 'compensation benefits payable under this chapter.'") (quoting § 440.15(9)(a), Fla. Stat. (1991)). And it is undisputed that Claimant last received payment of supplemental benefits less than two years prior to the filing of the subject petition for benefits.

The fact that the last payment of compensation was provided by the Division, and not the employer, does not matter under the statute. The first of the two contingencies—payment of compensation—is not modified by "the employer" like the second contingency—the furnishing of remedial treatment. Thus, the payment of compensation need not come from the employer in order to toll the statute. Indeed, the final phrase of the statute, "after the date of the last payment of compensation or after the date of the last remedial treatment furnished by the employer," requires only that treatment, but not the compensation, be provided "by the employer."

Because the supplemental benefit payments here served to toll the statute of limitations, we reverse and remand for further proceedings consistent with this opinion.

ROBERTS and ROWE, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Bill McCabe of William J. McCabe, P.A., Longwood, and Douglas H. Glicken, Orlando, for Appellant.

Tara L. Said of Eraclides, Gelman, Hall, Indek, Goodman, Waters & Traverso, Pensacola, for Appellee.