

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2018-CT-01659-SCT

SHEREE CLEVELAND

v.

***ADVANCE AUTO PARTS AND INDEMNITY
INSURANCE COMPANY OF NORTH AMERICA***

ON WRIT OF CERTIORARI

DATE OF JUDGMENT:	11/06/2018
TRIBUNAL FROM WHICH APPEALED:	MISSISSIPPI WORKERS' COMPENSATION COMMISSION
ATTORNEYS FOR APPELLANT:	DAVID N. GILLIS JAMES E. LEVER
ATTORNEY FOR APPELLEES:	DANIEL P. CULPEPPER
NATURE OF THE CASE:	CIVIL - WORKERS' COMPENSATION
DISPOSITION:	THE JUDGMENT OF THE COURT OF APPEALS IS AFFIRMED. THE DECISION OF THE WORKERS' COMPENSATION COMMISSION IS REVERSED AND REMANDED - 11/19/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

KITCHENS, PRESIDING JUSTICE, FOR THE COURT:

¶1. After suffering two work-related injuries, Sheree Cleveland settled her workers' compensation claims with Advance Auto Parts and its workers' compensation insurance carrier, Indemnity Insurance Company of North America (collectively, "the Employer/Carrier"). The Workers' Compensation Commission approved the settlement. Approximately one month later, the Employer/Carrier filed a Form B-31 indicating the last

payment had been made. More than a year after that, Cleveland filed a motion asserting that the Employer/Carrier had not paid all compensation due under the settlement and that two medical bills remained outstanding. The Commission found that, because a one-year statute of limitations had expired, it lacked jurisdiction to enforce its order approving the settlement agreement.

¶2. Cleveland appealed, and the Court of Appeals reversed. *Cleveland v. Advance Auto Parts*, No. 2018-WC-1659-COA, 2019 WL 6711682, at *7 (Miss. Ct. App. Dec. 10, 2019). The Court of Appeals questioned whether the one-year statute of limitations applied to the claim. *Id.* at *4. But instead of answering that question, the Court of Appeals found that the Employer/Carrier had been estopped from asserting a statute of limitations defense because it had agreed to pay the outstanding bills and had represented to the administrative law judge that it would do so. *Id.* at *5. The Court of Appeals found also that Cleveland’s contact with the Employer/Carrier within the limitations period had tolled the statute of limitations if, in fact, it applied. *Id.* at *7. The Court of Appeals reversed the Commission’s finding that it lacked jurisdiction and remanded the case for further proceedings. *Id.*

¶3. We affirm, but we do so for different reasons than those cited by the Court of Appeals. We hold that the one-year statute of limitations did not apply to Cleveland’s motion for enforcement of the settlement order. Therefore, her motion was filed timely.

FACTS

¶4. This case concerns the Employer/Carrier’s failure to pay a pharmacy bill and a physical therapy bill, which it had agreed to pay in a settlement with the claimant that was

approved by the Commission. Cleveland injured her lower back on November 25, 2014, while unloading freight at her job with Advance Auto Parts at Hazlehurst, Mississippi. She incurred medical bills for care and treatment of the injury, including a bill from Allred's Pharmacy. On February 3, 2015, she filed with the Commission a petition to controvert. On March 23, 2015, Cleveland injured her lower back a second time, for which she had physical therapy in April and May 2015. Cleveland filed a petition to controvert concerning that injury on October 19, 2015. The Commission consolidated the claims.

¶5. The Employer/Carrier received notice of the pharmacy bill on April 14, 2015, as part of an itemization of Cleveland's medical expenses for her first injury that she included in her response to the Employer/Carrier's discovery requests. The Employer/Carrier received notice of the physical therapy bill on March 14, 2016, when Cleveland filed a prehearing statement with the Commission that included an itemization of her medical expenses. The Employer/Carrier did not dispute either bill. On August 17, 2016, Cleveland and the Employer/Carrier filed a petition for approval of final compromise settlement with the Commission, which was approved the same day. The Commission's order approving the settlement said that the parties "ha[d] negotiated a compromise settlement of all claims arising out of the Claimant's alleged injuries for which compensation is being made herein and that all parties have reached a full and final statement of all claims" The Commission found that the Employer/Carrier

has paid for or *will pay* for the necessary and reasonable medical expenses incurred by Claimant related to [her] injuries for which claim is being made herein which [were] incurred before the date of the Petition for Approval of Final Compromise Settlement and [provided that] those expenses are covered

charges as contemplated by Miss. Code Ann. § 71-3-15 (1972) and Mississippi Workers' Compensation Commission General Rule 9.

(Emphasis added.)

¶6. On September 12, 2016, the Employer/Carrier filed a Form B-31 with the Commission. The Form B-31 was entitled "Notice of Final Payment." It provided:

This is NOT a release of the employer's or the insurance carrier's workers' compensation liability. If no further workers' compensation benefits are provided within one (1) year from the date this form [i]s properly filed with the Commission, the right to any further such benefits may be barred by the applicable statute of limitations and this claim finally closed. Exceptions may apply for incompetents or minors. If you incur additional loss of time from work, additional medical expense, or other additional expense, due to this injury, you should immediately contact your employer, the insurance carrier, or the Mississippi Workers' Compensation commission for further guidance.

The form contained Cleveland's signature dated September 1, 2016.

¶7. On November 30, 2016, Cleveland's attorney emailed the Employer/Carrier and requested payment of the pharmacy bill. Having received no response, on July 13, 2017, Cleveland's attorney sent a letter to the Employer/Carrier's attorney requesting payment of the pharmacy bill and the physical therapy bill. The letter included copies of the physical therapy billing statements and billing log and an itemized bill from Allred's pharmacy. Cleveland's attorney requested immediate payment and asked that the Employer/Carrier's attorney "contact me upon receipt of this letter and advise the reason for non-payment of these bills and provide assurance that these bills will be paid at this time."

¶8. Again, the Employer/Carrier did not respond, prompting Cleveland, on March 30, 2018, to file a motion with the Commission seeking payment of the outstanding bills and attorney fees. At a hearing before an administrative law judge, the Employer/Carrier said that

its adjuster was processing both outstanding bills for payment. On April 23, 2018, the Employer/Carrier sent an email to the administrative law judge stating that it had paid the physical therapy bill on April 18, 2018, and that it was processing the pharmacy bill for payment. On June 5, 2018, the administrative law judge entered an order finding that, because the Employer/Carrier had represented that it was processing the bills, Cleveland's motion would be held in abeyance. The administrative law judge granted Cleveland's request for attorney fees, a matter that was not before the Court of Appeals nor is it before this Court.

¶9. On June 25, 2018, the Employer/Carrier petitioned for review by the Commission, arguing that the statute of limitations barred Cleveland's request for payment of the bills. The Commission agreed, finding that it lacked jurisdiction because Cleveland had "made no application for additional benefits to the Commission within the Commission's one-year continuing jurisdiction of this claim."

STANDARD OF REVIEW

¶10. "The Commission's decision will be reversed only if it is not supported by substantial evidence, is arbitrary or capricious, or is based on an erroneous application of the law." *Logan v. Klaussner Furniture Corp.*, 238 So. 3d 1134, 1138 (Miss. 2018) (internal quotation marks omitted) (quoting *Lovett v. Delta Reg'l Med. Ctr.*, 157 So. 3d 88, 89 (Miss. 2015)). We apply *de novo* review to the Commission's interpretation of its governing statutes. *King v. Miss. Military Dep't*, 245 So. 3d 404, 408 (Miss. 2018).

DISCUSSION

¶11. This case concerns the applicability of the one-year statute of limitations in Section 71-3-53 to Cleveland's claim for the enforcement of medical payments ordered by the Commission. Section 71-3-53 provides, in pertinent part, that

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.

Miss. Code. Ann. § 71-3-53 (Rev. 2011). "Compensation" under Section 71-3-53 includes medical benefits. *Barr v. Conoco Chems., Inc.*, 412 So. 2d 1193, 1194 (Miss. 1982).

¶12. This Court has held that a purpose of Section 71-3-53 is to allow the Commission to enter a new order to correct a mistake of fact. *Armstrong Tire & Rubber Co. v. Franks*, 242 Miss. 792, 800, 137 So. 2d 141, 144 (1962). Section 71-3-53 also allows the Commission's entry of a new order due to a change in conditions, which "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) (citing 101 C.J.S. *Workmen's Compensation* § 854(c) (1958)). Under Section 71-3-53, the Commission may, within one year after the last payment of compensation, take actions including entering a new order awarding additional benefits. Miss. Code Ann. §71-3-53.

¶13. The Employer/Carrier argues that the one-year statute of limitations in Section 71-3-53 was triggered by its filing of the signed Form B-31 representing, erroneously as it turned

out, that the last payment of compensation had been made. Mississippi Code Section 71-3-37(7) provides that the employer shall provide the Commission with notice of the last payment of compensation:

Within thirty (30) days after the final payment of compensation has been made, the employer shall send to the commission a notice in accordance with a form prescribed by the commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. . . . No case shall be closed nor any penalty be assessed without notice to all parties interested and without giving to all such parties an opportunity to be heard.

Miss. Code Ann. § 71-3-37(7) (Rev. 2011). In accordance with Section 71-3-37(7), the Commission adopted a procedural rule providing for Form B-31.¹ This Court long has recognized that Form B-31 “constitutes notice to claimant that he is receiving his final payment of compensation . . . and that the employer and insurance carrier consider the case closed.” *Franks*, 137 So. 2d at 143. “It begins the running of the one year statute of limitations” under Section 71-3-53. *Id.*

¶14. The Court of Appeals found that the Form B-31 contained Cleveland’s signature, notified her that she had one year to bring future claims, and properly was filed in accordance with Section 71-3-53 and the Commission’s procedural rules. *Cleveland*, 2019 WL 6711682, at *6 n.9. Nonetheless, the information in the form was incorrect because it misrepresented that the Employer/Carrier had made the last payment of compensation ordered by the Commission. For that reason, the Court of Appeals acknowledged that the one-year statute

¹ Mississippi Workers’ Compensation Commission Procedural Rule 17 was in effect when the Employer/Carrier filed the Form B-31 in this case. On January 1, 2018, Rule 17 was amended and renumbered. Miss. Workers’ Comp. Comm’n Procedural R. 2.17.

of limitations might not apply. *Id.* at *4. The Court of Appeals held that the Employer/Carrier had been estopped from asserting the statute of limitations because of its inequitable conduct in failing to pay the medical bills that it had agreed to pay in the compromise settlement, noting that the Employer/Carrier had misrepresented to the administrative law judge the bills would be paid.² *Id.* at *5. Alternatively, the Court of Appeals found that, even if the one-year statute of limitations applied, it had been tolled by Cleveland's notice to the Employer/Carrier, within the one-year limitations period, of the outstanding bills. *Id.* at *7.

¶15. We hold that Cleveland's motion to enforce the Commission's compromise settlement order was not barred by the one-year statute of limitations in Section 71-3-53. As the Court of Appeals recognized, Cleveland did not claim additional benefits or future benefits. Cleveland had incurred the pharmacy bill and the physical therapy bill before settling with the Employer/Carrier. The Employer/Carrier had notice of both bills before entering into the compromise settlement. The Commission approved the compromise settlement, finding the Employer/Carrier "has paid for or *will pay* for the necessary and reasonable medical expenses incurred by Claimant . . . which [were] incurred before the date of the Petition for Approval of Final Compromise Settlement" (Emphasis added.) Undoubtedly, the bills for which Cleveland sought payment were included in the compromise settlement entered into by the Employer/Carrier and approved by the Commission.

¶16. Section 71-3-53 places a one-year limitations period on claims grounded on "a change in conditions" or "a mistake in a determination of fact[.]" Miss. Code Ann. § 71-3-53. When

² We share the concern expressed by the Court of Appeals regarding the inequity of the Employer/Carrier's actions in this case.

confronted with such a claim, or *sua sponte*, the Commission may “review a compensation case” and/or “issue a new compensation order.” *Id.* The new compensation order may “terminate, continue, reinstate, increase, or decrease such compensation, or award compensation.” *Id.* The statute of limitations for a claim within the purview of Section 71-3-53 expires one year “after date of the last payment of compensation.” *Id.* In her postsettlement motion, Cleveland did not request that the Commission review her case, issue a new compensation order, or award compensation. Rather, she asked the Commission to order the Employer/Carrier to pay the compensation the Commission already had ordered. Nor did Cleveland urge a change in conditions or a mistake in a determination of fact. Cleveland sought nothing more or less than enforcement of an existing Commission order for payment of compensation, relief not contemplated by Section 71-3-53.

¶17. Although the filing of Form B-31 impacts the time a claimant has to secure relief under Section 71-3-53, Cleveland did not seek the relief provided by that statute. Therefore, the filing of the Form B-31 was irrelevant to determining the timeliness of Cleveland’s motion. Instead, Cleveland’s motion for enforcement of a Commission order for payment of compensation was governed by Mississippi Code Section 71-3-37(8), which provides that

The commission (a) may upon its own initiative at any time in a case in which payments are being made without an award, and (b) shall in any case where right to compensation is controverted or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation or from the employer that the right to compensation is controverted or that payments of compensation have been stopped or suspended, make such investigations, cause such medical examinations to be made, hold such hearings, and take such further action as it considers will properly protect the rights of all parties.

Miss. Code Ann. § 71-3-37(8) (Rev. 2011). Section 71-3-37(8) empowers the Commission, upon notice that “payments of compensation have been stopped,” to investigate and take action to “protect the rights of all parties.” Cleveland’s motion averring that the Employer/Carrier had not paid all the compensation that the Commission had ordered fell within the Commission’s authority to enforce its order under Section 71-3-37(8).

CONCLUSION

¶18. Because Cleveland’s motion requesting medical payments due under the compromise settlement order was not time-barred by Section 71-3-53, we affirm the judgment of the Court of Appeals that reversed the decision of the Commission and remanded this case to the Commission for further proceedings.

¶19. THE JUDGMENT OF THE COURT OF APPEALS IS AFFIRMED. THE DECISION OF THE WORKERS’ COMPENSATION COMMISSION IS REVERSED AND REMANDED.

RANDOLPH, C.J., KING, P.J., COLEMAN, MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR.