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Question: Does the filing of a C-9 toll the statute of limitations contained in R.C. 4123.52?

I am often asked how certain workers' compensation claims can go on for years, or even decades. The Industrial Commission's jurisdiction over an allowed claim is continuing, meaning the Commission can make modifications with respect to former findings or orders. However, this jurisdiction is subject to a limitations period set forth in R.C. 4123.52, which is either five (5) or six (6) years from the date of injury or ten (10) years from the date of last payment of compensation, depending on the date of injury. Recently, the Ohio Court of Appeals, Fifth Appellate District, considered the question of whether a request for payment for treatment filed prior to the running of the limitations period would toll the statute for other requests made after the statute had run?

Copeland v. Bur. of Workers' Comp., 2011-Ohio-813, involved a claimant who sustained an on-the-job knee injury on September 8, 1977. The last medical bill for treatment for the allowed conditions was paid on March 20, 1996. On January 17, 2006, the claimant's physician filed a C-9 to request payment for additional treatment. On April 12, 2006, the claimant filed a C-86 requesting additional allowances, and on July 15, 2009, the claimant filed another C-86 seeking a determination on the January 17, 2006 C-9 and whether any additional conditions would be allowed. At a hearing, a DHO denied the requests, finding that the claimant did not prove that his original C-9 request was reasonably related to the allowed conditions, and that his April and July C-86 requests were beyond the ten (10) year limitations period. The decision was upheld through administrative appeals and in the common pleas court, which found the claimant's requests were barred by the statute of limitations. This prompted an appeal by the claimant.

The Fifth District Court of Appeals reversed, holding that the January 17, 2006 C-9 tolled the statute of limitations for the other requests that were made later. The BWC argued that the statute of limitations found in R.C. § 4123.52 requires that payment must be actually made within the ten (10) year period for the Commission to retain jurisdiction, not just requested. The court disagreed, finding that inactivity on the claimant's C-9 was due to the BWC, not the claimant. A C-9 request is not initiated by a claimant, but by a medical provider, and the claimant had no motivation to pursue the January 17, 2006 request for payment. The court remanded the case to the Industrial Commission for consideration of the C-86 motions filed after the statute had supposedly run.

Copeland illustrates how some claims can and do linger for decades, despite the statute of limitations. The claimant's original injury was in 1977 and additional treatment and medical allowances were still being litigated over 30 years later. If you have any specific questions, or would like to discuss this or any other workers' compensation issues, you can contact me or Adam Sadowski from our Toledo office.

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