

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

	SUPREM STATE OF	ED ECOURT
Case No. 120,197	APR 2	2022
COLUMN TECHNOLOGY CORR and	JOHN D. F CLER	ADDFN
SCHLUMBERGER TECHNOLOGY CORP. and TRAVELERS INDEMNITY CO. OF AMERICA, Petitioners,		20-22
VS.	Jocketed: Marshal: COA/OKC:	as
ERASMO PAREDES and THE WORKERS' COMPENSATION COMMISSION, Respondents,	COA/TUL:	
APPEAL FROM THE WORKERS' COMPENSATION COMMIS	SSION	
ANSWER BRIEF OF RESPONDENT, ERASMO PAR	EDES	

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JOEY CHIAF, OBA # 10240 1717 N. Broadway Oklahoma City, OK 73103 405-524-1501

ATTORNEYS FOR RESPONDENT ERASMO PAREDES

April 20, 2022

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The Legislative History of H.B. 367 in the 2019 legislative session is attached.

SUMMARY OF THE RECORD

Respondent, Erasmo Paredes, the employee and claimant before the Workers' Compensation Commission, filed a CC Form 3 on December 3, 2020, alleging a work-related injury on December 29, 2019. (Record, p. 3) The Petitioner/Employer admitted there was a work-related accident but raised a Statute of Limitations defense. (Record, p. 18)

The facts and relevant dates are not disputed. The issue is the interpretation of 85A O.S. § 2019 § 69 (A)(1), the statute of limitations statutory provision in effect at the time of the accident.

KEY DATES STIPULATED TO BY THE PARTIES:

Date of Injury:

December 29, 2019

Last medical bill paid by Employer:

February 14, 2020

Form 3 filed:

December 3, 2020

The administrative law judge (ALJ) issued an order on May 13, 2021. (Record, p. 22-24)

The order interpreted the statutory provision in favor of the Respondent/employee. The

Petitioner appealed to the Workers' Compensation Commission (Commission) en Banc. (Record p. 41-45) The Commission affirmed the decision of the ALJ in an order of January 18, 2022.

(Record, p. 55-56)

The Petitioner timely filed this appeal to the Supreme Court of Oklahoma.

STANDARD OF REVIEW

The appellate standard of review in a workers' compensation case in Oklahoma is determined by the law in effect on the date of the injury. *Williams Companies, Inc. v. Dunkelgod*, 2012 OK 96, 295 P.3d 1107, 1113. Further, questions of law are reviewed by a de novo standard under which there is plenary, non-deferential, and independent authority to

determine whether the trial court erred in its legal rulings. *American Airlines v. Hervey*, 2001 OK 74, 33 P.3d 47. Because this matter presents a question of law regarding statutory construction of a statute of limitations, appellate review is de novo. See *Rural Waste Management & Indem. Ins. Co. of North America v. Mock*, 2012 OK 101, ¶ 6, 292 P.3d 24.

This workers' compensation claim is for an injury after the effective date of Title 85A, Administrative Workers' Compensation Act (AWCA), making it the applicable law. The AWCA, 85A O.S. § 78, provides that the Supreme Court may modify, reverse, remand for rehearing, or set aside the judgment or award only if it was:

- 1. In violation of constitutional provisions;
- 2. In excess of the statutory authority or jurisdiction of the Commission;
- 3. Made on unlawful procedure;
- 4. Affected by other error of law;
- 5. Clearly erroneous in view of the reliable, material, probative and substantial competent evidence;
- 6. Arbitrary or capricious;
- 7. Procured by fraud; or
- 8. Missing findings of fact on issues essential to the decision.

PROPOSITION I

The Workers' Compensation Commission has authority to interpret the meaning and application of a provision of the Administrative Workers' Compensation Act (AWCA).

ARGUMENT AND AUTHORITIES

85A O.S. § 27(A) provides, in pertinent part:

A. The Workers' Compensation Commission shall be vested with jurisdiction over all claims filed pursuant to the Administrative Workers' Compensation Act. All claims so filed shall be heard by the administrative law judge sitting without a jury. The Commission shall have full power and authority to determine all questions in relation to claims for compensation under the provisions of the Administrative Workers' Compensation Act. The Commission, upon application of either party, shall order a hearing. Upon a hearing, either party may present evidence and be represented by counsel. Except as provided in this act, the decision of the administrative law judge shall be final as to all questions of fact and law. (Emphasis added)

The Oklahoma Supreme Court has held that the Commission has sweeping powers, pursuant to 85A O.S. § 27(A), to adjudicate all issues under the AWCA. In *Robinson v. Fairview Fellowship Home*, 2016 OK 42, 371 P.3d 477, the Court stated:

¶6 Adjudicative authority--the "authority to hear and determine forensic disputes"--"is the exclusive domain of the judiciary." Consistent with Art. 7, § 1, this Court has on numerous occasions held that "[w]hen an administrative board acts in an adjudicative capacity, it functions much like a court." Such proceedings are quasi-judicial in nature--a "term applied to the action of public administrative officers or boards which investigate facts or ascertain the existence of facts; draw conclusions from them as a basis for official action; and exercise discretion of a judicial nature in connection with and incidental to the administration of matters entrusted to or assigned to the officers or board." (Footnotes omitted)

Robinson also held that the Commission has the authority to even determine the constitutionality of a statute:

¶9 The "full power and authority to determine **all questions** in relation to claims for compensation" necessarily includes questions of law. A question of law includes a constitutional question raised by the interpretation and application of a particular workers' compensation statute to a particular party. Thus, the Commission or its ALJs when exercising adjudicative authority may properly refuse to apply a statute to a particular party before it, if the Commission or its ALJs find that such application would be repugnant to the Constitution.

PROPOSITION II

The Commission correctly interpreted 85A O.S. \S 69(A)(1) to give Respondent/employee one year from the date of his injury to file a claim before the Workers' Compensation Commission.

ARGUMENT AND AUTHORITIES

For the date of injury in this claim, the statute of limitation for filing a workers' compensation claim before the Workers' Compensation Commission is found at 85A O.S. § 69(A)(1), which provides, in pertinent part:

A. Time for Filing.

1. A claim for benefits under this act, other than an occupational disease, shall be barred unless it is filed with the Workers' Compensation Commission within one (1) year from the date of the injury or, if the employee has received benefits under this title for the injury, six (6) months from the date of the last issuance of such benefits. For purposes of this section, the date of the injury shall be defined as the date an injury is caused by an accident as set forth in paragraph 9 of Section 2 of this title.

A review of the settled law regarding the construction of statutes passed by the Legislature and signed into law by the Governor is found in *Ledbetter v. Oklahoma Alcoholic Beverage Laws Enforcement Commission*, 1988 OK 117, 763 P.2d 122.

¶7.... Of course, the primary goal of statutory construction is to ascertain and follow the intention of the legislature... Further, the cardinal rule of statutory construction is to begin with consideration of the language used and courts should not read into a statute exceptions not made by the Legislature. Finally, statutory construction that would lead to an absurdity must be avoided and a rational construction should be given to a statute if the language fairly permits.

The Petitioner in this case is attempting to enforce a statute of limitation (SOL) of August 14, 2020, less than nine months after the date of injury. The Legislature intended the SOL in workers' compensation claims to be a minimum of one year. The operative portion of the statute provides:

...within one (1) year from the date of the injury <u>or</u>, if the employee has received benefits under this title for the injury, six (6) months from the date of the last issuance of such benefits.... (Emphasis added)

The word "or" in the Section 69 does not limit the one year minimum. Instead, it is an extension of the SOL. It is a tolling statute. The language regarding six months is intended to extend the limitation beyond the one year in the event the employer provided benefits for the employee. If an employee was paid Temporary Total Disability (TTD) for two years, the SOL would run six months from the date of the last TTD payment. That is the well-settled

interpretation of what the Legislature intended in prescribing a SOL for the filing of workers' compensation claims in Oklahoma.

Respondent/employee submits there are two distinctly different periods of limitations in Section 69 (A)(1); the traditional one-year statute for filing a claim and the extended limitation beyond one year where benefits are provided.

Allowing the Petitioner, in this admitted injury claim, to benefit from a nine-month SOL violates Art. 5, § 46 of the Oklahoma Constitution which prohibits special laws that treat parts of an entire class of similarly affected persons differently. If the Respondent had denied the claim, there is no question the SOL is one year. Now, Petitioner argues that since it accepted the claim and provided benefits, there is only a nine-month SOL.

The Oklahoma Supreme Court, in *Torres v. Seaboard Foods, LLC*, 2016 OK 20, 373

P.3d 1057, held that all employees covered by the AWCA constitute a single class. Any interpretation providing for a different SOL for employees in an admitted claim and a denied claim would be unconstitutional as a special law. The difference in substantive rights and benefits among members of the same class was the basis for the Supreme Court to find the OPT OUT scheme in the AWCA unconstitutional as a special law. *Vasquez v. Dillards, Inc.*, 2016 OK 89, 381 P.3d 768.

Section 69 can only be interpreted to give an employee in this state a minimum of one year after an injury in which to file a claim. Section 69 covers other situations as well.

Subsection (A)(4) serves as a Statute of Repose which requires a dismissal of a claim within six months of certain actions. That six-month period should not be confused with the one-year original statute of limitations. Subsection (A)(4) only applies AFTER a claim has been timely filed.

Once the statute of limitations of one year is established by the Legislature, it cannot be taken away. "A period of time cannot be removed." For an excellent review of the nature of a statute of limitations, see *Artis v. District of Columbia*, 583 U.S. __ (2018), 138 S. Ct. 594. *Artis* holds that a tolling provision, such as the six months in the statute at issue, "stops the clock."

In Artis, Justice Ruth Bader Ginsburg wrote in the Court's opinion:

[S]tatutes of limitations are "fundamental to a well-ordered judicial system." Board of Regents of Univ. of State of N.Y. v. Tomanio, 446 U.S. 478, 487, 100 S.Ct. 1790, 64 L.Ed.2d 440 (1980). We note in this regard, however, that a stop-the-clock rule is suited to the primary purposes of limitations statutes: "preventing surprises" to defendants and "barring a plaintiff who has slept on his rights." American Pipe & Constr. Co. v. Utah, 414 U.S. 538, 554, 94 S.Ct. 756, 38 L.Ed.2d 713 (1974)...

[In interpreting a federal statute] ...the period of limitations may be "tolled," i.e., suspended,... the time clock starts running again when the tolling period ends, picking up where it left off.

Black's Law Dictionary defines a statute of limitations as a "time frame set by legislation where affected parties need to take action to enforce rights or seek redress after injury or damage." Section 69 clearly sets the statute of limitations for filing a workers' compensation claim in Oklahoma as one year, at least, and provides for extending the time for filing if the employer provides benefits to the employee, an action by the employer that tolls the running of the original one-year statute of limitations. The six months provision is a stop-the-clock rule as described by Justice Ginsburg. It is not meant to shorten the SOL for filing a claim.

Administrative Law Judge, the Honorable Tara Inhofe, wrote in the May 13, 2021 order:

The salient issue is whether the language which gives six months for filing from last issuance of benefits is intended to contract or expand the one year Statute of Limitations outlined just before... It is the Commission's finding that in this case, the word "or" is used to express alternative statutes of limitations, with claimant receiving the benefit of whichever of those is longer. (Record p. 22-24)

In the present case, claimant filed his claim against the employer within one year of the date of injury, within the time frame expressed by the Legislature.

PROPOSITION III

The Oklahoma Legislature has a long history of providing alternative statutes of limitations, with claimant receiving the benefit of whichever of those is longer.

ARGUMENT AND AUTHORITIES

Armco, Inc. v. Holcomb, 1985 OK 5, 694 P.2d 937, recognized the authority of the Legislature to create a tolling provision in a statute that limits the time to file a claim:

The statutory time limitation governing the right to claim benefits under the Workers' Compensation Act absent proof of facts which operate to arrest, suspend, toll or waive the limitation is set forth at 85 O.S. 1981 § 43, which in pertinent part states: "The right to claim compensation under the Workers' Compensation Act shall be forever barred unless, within one (1) year after the injury or death, a claim for compensation thereunder is filed with the Administrator. Provided, however, claims may be filed at any time within one (1) year from the date of last payment of any compensation or remuneration paid in lieu of compensation or within one (1) year from last authorized medical treatment." (footnote 1.)

It is clear from the holding in *Armco*, *Inc*. that the Legislature has a history of providing a standard SOL, AND a tolling provision. The 1981 version of the SOL statute cited in the opinion above created two DIFFERENT time periods in which to file a claim....one year from the injury OR one year from the last payment of benefits. That alternative SOL, expressed a half century ago, is the same intent of the Legislature in the case at bar.

The tolling of the original statute as an alternative SOL was affirmed in *McGhee v*.

Oklahoma Metal Heat Treating, 1982 OK CIV APP 21, 644 P.2d 127. Chardon v. Fumero Soto,

462 U.S. 650, 660-61 (1983) supports the proposition that a tolling provision extends the SOL.

In a footnote, Chardon noted that it was "possible to establish a fixed period such as six months or one year during which the plaintiff may file suit, without regard to the length of the original limitations period or the amount of time left when tolling began."

The alternative SOL pattern in Oklahoma continued with an update of the Workers' Compensation Act in 1997. 85 O.S. 1997§ 43(A) provided:

A. The right to claim compensation under the Workers' Compensation Act shall be forever barred unless, within two (2) years after the date of accidental injury or death, a claim for compensation is filed with the Workers' Compensation Court. Provided however, a claim may be filed within two (2) years of the last payment of any compensation or remuneration paid in lieu of compensation or medical treatment which was authorized by the employer or the insurance carrier.

The 1997 changes gave an employee two years from the date of injury to file a claim OR two years from the last payment of compensation or medical treatment.

The same language appeared in the 2001 and 2005 changes in the workers' compensation law, Title 85. Even when a major overhaul of Title 85 was passed by the Legislature in 2011 as the Workers' Compensation Code, the identical alternative SOL appeared. 85 O.S. 2011 § 318.

When the AWCA became effective in 2014, the Legislature provided:

A. Time for Filing.

- 1. A claim for benefits under this act, other than an occupational disease, shall be barred unless it is filed with the Commission within one (1) year from the date of the injury. If during the one-year period following the filing of the claim the employee receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter. B. Time for Filing Additional Compensation.
- 1. 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 disability compensation or two (2) years from the date of the injury, whichever is greater.

85A O.S. 2013 § 69(A), Laws 2013, SB 1062, c. 208, § 69, eff. February 1, 2014.

The Legislature, in the above version of Section 69, established a SOL of one year from the date of an injury but gave an employee another year from the filing of the claim to pursue benefits. If benefits were paid, the SOL was extended to <u>two years</u> if the claimant asked for

"additional compensation." Such language, with "initial benefits" and "additional compensation" caused confusion among judges and lawyers alike. Therefore, the alternative SOL was shortened by the 2019 Legislature.

Section 69(A)(1) in effect on the date of injury for the Respondent/employee in this case continued the pattern of alternative SOL:

A. Time for Filing.

1. A claim for benefits under this act, other than an occupational disease, shall be barred unless it is filed with the Workers' Compensation Commission within one (1) year from the date of the injury or, if the employee has received benefits under this title for the injury, six (6) months from the date of the last issuance of such benefits. Amended by Laws 2019, HB 2367, c. 476, § 27, emerg. eff. May 28, 2019.

Every version of the SOL, including the latest, shortened version, provides an <u>extended</u> SOL if benefits have been provided by the employer.

PROPOSITION IV

Petitioner's reliance on a draft of a workers' compensation bill working its way through the Legislative process to determine legislative intent is both misplaced and confusing.

ARGUMENT AND AUTHORITIES

A bill becomes law after a lengthy journey through committees, having the title stricken, floor votes in both houses of the Oklahoma Legislature, a meeting of the minds in a joint conference committee, the title restored, and back to each House for final consideration. When both houses pass the bill with the restored title, it is sent to the Governor for his signature. As an aid to the Court, attached to this brief is the Bill Information for HB 2367 from the Legislature's Website, www.oklegislature.gov/bill info.

The House Judiciary Committee passed the 2019 changes on March 27. The full House approved the measure on March 13, 2019. The Senate author struck the title (a procedure used by

legislators to make certain that a final version of the bill will be hammered out in a joint conference committee. On April 24, the full Senate passed an amended version of the bill that contained the IDENTICAL LANGUAGE that ended up as law.

The Petitioner rests its entire case upon the original House-passed version of HB 2367 which provided for alternative SOL but added the words, "whichever is greater." The House-passed version contained lengthy language to show the Legislature's intent to maintain an alternative SOL, to reflect the statute for decades.

When the bill went to the Senate, it was amended in the Senate Judiciary Committee with a Committee Substitute. The lengthy language was shortened to express the alternative SOL in one sentence rather than several sentences. The confusing concept of "additional compensation" was removed.

It is improper to examine different versions of Section 69 THAT NEVER BECAME LAW, especially when the opposing house, the Senate, changed the wording, eliminated "whichever is greater," and sent it back to the House. With the title stricken, the House rejected the Senate amendments and bill was sent to a joint conference committee.

On May 17, 2019, the conference committee report (CCR) was submitted. The language of Section 69 was the shortened version of the alternative SOL that eventually became law when the Governor signed HB 2367 on May 28, 2019. With the emergency attached, the bill became law that day.

An isolated version of a legislative bill **that never becomes law** cannot be the basis for a legal explanation or used to determine the intent of the Legislature. I can find no appellate case which considers the issue. However, common sense applies. At the beginning of the 2022 legislative session, 2,300 new bills or resolutions had been introduced and 2,500 pieces of

legislation were carried over from the 2021 session. From those 4,800 proposals, only approximately 500 bills will become law, and the language in most instances will be changed either in committee or on the floor of either the House or Senate. www.oklahomawatch.org.

In a recent case, *McIntosh v. Watkins*, 2019 OK 6, 441 P.3d 1094, Justice Combs provided an overview of what criteria the Supreme Court of Oklahoma uses in determining legislative intent.

¶The primary goal of statutory construction is to ascertain and to apply the intent of the Legislature that enacted the statute. Samman v. Multiple Injury Trust Fund, 2001 OK 71, ¶13, 33 P.3d 302. In ascertaining legislative intent, the language of an entire act should be construed with a reasonable and sensible construction. Udall v. Udall, 1980 OK 99, ¶11, 613 P.3d 742. Statutory construction that would lead to an absurdity must be avoided and a rational construction should be given to a statute if the language fairly permits...

The public policy expressed in this state's workers' compensation laws since the first act was passed is to provide a reasonable statute of limitation, to give an injured worker a reasonable period of time in which to file a formal claim before the Workers' Compensation Court and now the Workers' Compensation Commission. It is generally recognized that the AWCA shortened the SOL to one year from the date of the injury, but provided an alternative SOL if benefits were paid by an employer beyond the one year. If the current version of 85A O.S. § 69(A)(1) is construed to SHORTEN the original one-year SOL, it would lead to an "absurdity," a result that the Supreme Court criteria suggests should be avoided.

SUMMARY

Based upon the foregoing Argument and Authorities, the Respondent/employee requests this Honorable Court to affirm the opinion of the Workers' Compensation Commission that the claim for benefits under the AWCA was timely filed within one year of the date of his injury.

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed by first class mail, postage prepaid, on April 20, 2022, to:

Attorney General of Oklahoma 313 N.E. 21st Street Oklahoma City, OK 73105

Mia C. Rops, Esq. 211 N. Robinson, Suite 430 Oklahoma City, OK 73102

BOB BURKE

BILL INFORMATION FOR HB 2367

HB 2367 by Kannady and Daniels

SELECT SESSION: 2019 Regular Session

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Search

Workers' compensation; amending various statutes relating to workers' compensation; emergency.

(4) (2005) (3) 程序(3)			
Action	Journal Page	Date	Chambe
First Reading	226	02/04/2019) Н
Authored by Representative Kannady	226	02/04/2019) Н
Second Reading referred to Judiciary	316	02/05/2019	н
CR; Do Pass, amended by committee substitute Judiciary Committee	473	02/27/2019) Н
General Order	823	03/13/2019	Э Н
Authored by Senator Daniels (principal Senate author)	823	03/13/2019	н
Amended	823	03/13/2019	ЭН
Title stricken	824	03/13/2019	Н
Third Reading, Measure and Emergency passed: Ayes: 95 Nays: 2	824	03/13/2019	Э Н
Referred for engrossment	824	03/13/2019	Э Н
Engrossed, signed, to Senate	851	03/18/2019	ЭН
First Reading	912	03/18/2019	S
Second Reading referred to Judiciary	937	03/26/2019	9 S
Reported Do Pass, amended by committee substitute Judiciary committee; CR filed	1029	04/09/2019	9 S
General Order, Amended by Floor Substitute	1188	04/24/2019	9 S
Measure and Emergency passed: Ayes: 44 Nays: 0	1189	04/24/2019	9 S
Referred for engrossment	1189	04/24/2019	9 S
Engrossed to House	1212	04/25/2019	9 S
SA's received	1177	04/25/2019	9 H
SA's rejected, conference requested, naming Conference Committee on Judiciary	1251	05/02/201	9 H
Conference granted, SCs named Daniels, Jech, Howard, Weaver, Brooks, Floyd	1312	05/07/201	9 S
CCR submitted	1352	05/17/201	9 H
Title restored	1352	05/17/201	9 H
CCR adopted	1354	05/20/201	9 H
Fourth Reading, Measure and Emergency Passed: Ayes: 85 Nays: 0	1354	05/20/201	9 H
To Senate	1354	05/20/201	9 H

CCR adopted	1422	05/22/2019	s
Measure and Emergency passed, to House: Ayes: 46 Nays: 0	1422	05/22/2019	s
Referred for enrollment	1396	05/22/2019	н
Enrolled, signed, to Senate	1401	05/22/2019	Н
Enrolled measure signed, returned to House	1442	05/22/2019	S
Sent to Governor	1402	05/22/2019	Н
Approved by Governor 05/28/2019	1431	05/23/2019	н