

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 13, 2020

CLAIM NO. 201565736

JASON SMISER

PETITIONER

VS.

APPEAL FROM HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE

OLDHAM COUNTY FISCAL COURT
and HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

BEFORE: ALVEY, Chairman, STIVERS and BORDERS, Members.

STIVERS, Member. Jason Smiser (“Smiser”) appeals from the March 6, 2020, Opinion and Order of Hon. Grant S. Roark, Administrative Law Judge (“ALJ”) dismissing with prejudice his claim against Oldham County Fiscal Court (“Oldham County”) as barred by the statute of limitations.

On appeal, Smiser sets forth three arguments. Smiser first asserts the insurer allegedly failed to report the proper period of temporary total disability

(“TTD”) benefits paid for his concurrent employment as a volunteer firefighter thereby tolling the statute of limitations. Next, Smiser asserts the check issued to him on July 28, 2016, indicates the TTD benefits for his concurrent employment were paid through December 6, 2016. Thus, he contends the claim was timely filed. Finally, Smiser maintains he never received the purported October 17, 2016, TTD payment correcting this typographical error. Therefore, Oldham County is estopped from asserting a statute of limitations defense.

The Form 101, filed on October 31, 2018, alleges Smiser sustained work-related injuries on February 25, 2015, when he slipped and fell on ice in the parking lot.

Oldham County’s Form 111 denied Smiser’s claim, in part, because it was barred by the statute of limitations.

Smiser was deposed on December 19, 2018. He testified that after falling in the parking lot at work on February 25, 2015, he stayed on the ground for about two minutes, and then walked into the building to complete his work shift. After approximately an hour, he began experiencing pain in his lower back and left leg. Smiser worked for two weeks after the fall until he realized something was wrong. Smiser believed his surgery took place in October 2015, and he returned to work in December 2015. Smiser recalled receiving TTD benefits when he was off work. He also recalled receiving a letter from the Department of Workers’ Claims (“DWC”) when his benefits were terminated. He testified as follows:

Q: And I want to ask you if you remember getting this letter from the Department of Workers’ Claims [“DWC”]?

A: Yeah; I remember this [sic] seeing that.

Q: Okay. All right. All right. So this is the letter dated December 10, 2015, from the Department of Workers' Claims to you. And it tells you here that the employer or its workers' compensation insurer has terminated your voluntary income benefits and that you may request additional benefits that may be legally appropriate by filing an Application for Resolution of Claim with the Department of Workers' Claims, and this application must be filed within two years after the date your injury occurred or within two years after the last voluntary payment of income benefits to you, whichever last occurs. They then go on to explain that if you don't file a claim within two years, your claim could be barred by statute of limitations.

Q: You got a copy of that?

A: [nods head]

Subsequent to Smiser receiving the December 10, 2015, letter from the DWC, Smiser informed Oldham County's insurance company that he had received wages from concurrent employment with the volunteer fire department. As a result, he was issued an additional check for TTD benefits. Smiser acknowledged receiving the extra check dated July 28, 2016. He did not recall when he received the check or when he went to the bank and cashed it.

Smiser also testified at the January 9, 2020, hearing. He testified that when he was working for Oldham County he was also working as a volunteer firefighter at South Oldham Fire and Rescue.

After his fall, Smiser was ultimately diagnosed with a herniated disk which required surgery. Following his surgery, he returned to light duty work at Oldham County on December 7, 2015. At that time, he did not return to the fire department. On January 12, 2016, Smiser returned to full duty work at both jobs.

Steve Mason (“Mason”), Information Systems Manager for data management in the Labor Cabinet, was deposed on January 18, 2019. The first S1, marked as Exhibit 3, indicates Smiser’s TTD benefits were paid from August 18, 2015, through December 5, 2015.¹ Exhibit 5 is the second S1, generated on October 19, 2016, which indicates the period of Smiser’s TTD benefits did not change, only the rate. Mason testified as follows:

A: The next event was another subsequent report of S1 was received on – it looks like 10-19-2016. And it was also accepted, and just from my looking at it, it looks like that the change – the only changes were the benefit amount.

Q: Okay.

A: And the benefit – oh, did you need –

Q: So period of benefits didn’t change. It was the amount that changed?

A: Yes.

Mason testified why a second suspension of benefits letter would have been generated but not sent to Smiser:

When another suspension comes in, and it generates a letter, what we do is we check the letter to make sure that the address and information is the same but mainly that determination benefits date or termination date is the same. If termination date is the same, then we don’t send out the letter. We keep a copy of it, we mark it as duplicate, and keep it in a file.

Howard Camnitz Lawson, III, the Assistant Director for the Division of Information Technology Support Services was deposed on February 12, 2019. His

¹ On page 10 of his deposition, Mason testified that an “S1” is a “suspension of benefits.”

brief deposition confirmed Mason's testimony regarding why a second suspension of benefits letter would have been generated but not sent to Smiser.

Patricia Stewart ("Stewart"), a senior workers' compensation insurance adjuster at Underwriters Safety & Claims ("Underwriters"), was deposed on March 21, 2019. She testified Oldham County is insured by the Kentucky Association of Counties. TTD benefits were paid to Smiser from October 12, 2015, through December 6, 2015. His benefits terminated on December 6, 2015, because Smiser was released to work.

Regarding the additional payment of TTD benefits for Smiser's concurrent employment, she provided the following:

Q: As he explained to us, there was some additional then [sic] payment of temporary total disability benefits?

A: Yes. There was a rate difference.

Q: Okay.

A: **For the same period of time from 10/12/15 to 12/6/15, the rate difference was in the amount of \$466.64.** (emphasis added).

The date of the check for the rate difference was issued to Smiser on July 28, 2016.

Stewart testified her handwritten notes appear on Exhibit 5 which is a letter from South Oldham Fire Department, dated October 28, 2015, detailing the wages Smiser earned. She explained:

Q: Now, you told us a little bit about Mr. Smiser's rate differential this [sic] is for concurring employment; is that correct, he had another job?

A: Yes.

Q: Whose handwriting is this on here?

A: Mine.

Q: Okay.

A: Actually, this is the employer's handwriting up here.

Q: So yours is below the line?

A: Yes.

Q: So that's your 1/12/2016 return to work, no restriction; is that correct?

A: Yes.

Stewart confirmed that Smiser was released to full duty work at Oldham County and as a volunteer firefighter on January 12, 2016.

Exhibit 7 is comprised of notes generated by Stewart that pertain to Smiser's case. Stewart testified as follows:

Q: I'm almost finished. These are your diary notes. Let me see. You have an entry here. It looks like 10/17/16?

A: Yes.

Q: It says 'rate difference.' It says also date changed to 12/6/15 from '16. Do you know what that refers to?

A: I think the wrong date was put on either the payment or – EDI SI. Date change. 12/16/15 from '16. Okay. We had put the wrong date in there, so it was changed from '15 instead of '16.

Exhibit 10 is the stub for the TTD benefits check Underwriters sent Smiser after learning of his concurrent employment. Stewart testified as follows:

Q: All right. Does this look like one of the stubs from an Underwriter's check that y'all send out for TB [sic]?

A: Yes.

Q: And Mr. Smiser has testified that this is what he received [sic] y'all and this is the check that he cashed. Can you tell me what the date is that this is from and the to-date is?

A: 10/12/15 to 12/6/16.

Q: Okay. And this is the check that you have indicated that was mailed out in July, correct?

A: Yes.

Smiser cashed the July check in August 2016. Stewart testified that the records she reviewed do not reflect a subsequent check was issued to Smiser after the July check. She discussed the multiple check entries appearing on her payment ledger as shown on Exhibit 12:

Q: Okay. And I understand that. But looking at this payment ledger, we've got two different ones here, right? Received Mr. Smiser's check. You have identified his signature on the back as having [sic] negotiated.

It's got a processing date of August, which certainly indicates that there was a payment made in August, reflected here, that coincides with that check and that signature and that processing.

And we've got the same check number listed for the 10/17 date. **And the only check we've got is the one issued in July and negotiated in August. So do you have any idea if there was another payment made or if that's some type of duplicate entry?**

A: I didn't make another payment. So I'm assuming it's a duplicate entry of some sort. (emphasis added).

Stewart testified that duplicate entries for the same check occur. She provided the following explanation:

A: In our system, sometimes as many as three checks will come up with a same check number all on different files. I don't know how to explain it.

Q: Okay.

A: But I have seen it happen before. But I don't know. It confuses me. If I need to go and check a payment and I put in my specific check number, there may be as many as three checks come up with that number and I have to look for my amount. So this having the same check number, I'm saying it was some kind of – I don't know how it got there – duplicate entries. It's the same date [sic], but it's just different issue dates.

The January 9, 2020, Benefit Review Conference (“BRC”) Order and Memorandum indicates TTD benefits were paid from October 12, 2015, through December 6, 2015. The sole contested issue was whether the statute of limitations barred the claim.

The March 6, 2020, Opinion and Order contains the following findings of fact and conclusions of law which are set forth *verbatim*:

As indicated above, the only issue to be determined at this point is whether plaintiff's claim is barred by the statute of limitations contained in KRS 342.185. Under the statute, the claimant has two years from the date of his injury or the last payment of temporary, total disability benefits to file a claim. In this case, plaintiff was injured on February 25, 2015. There is a dispute as to the date he was last paid for TTD benefits. The defendant maintains he was last paid TTD on December 6, 2015, while plaintiff argues he was actually last paid TTD benefits through January 12, 2016. Plaintiff filed his claim on October 31, 2018.

The parties do not dispute that the defendant paid TTD benefits to plaintiff through December 6, 2015 at the rate of \$442.69 per week, and that the defendant promptly notified the Department of Workers Claims of its last TTD payment of December 6 by its EDI S1, which it filed with the Department of workers claims on December 7, 2015. The parties also do not dispute that the DWC issued a notice letter to plaintiff on December 10, 2015 pointing out that the defendant had ceased paying benefits and that plaintiff had two years from December

6, 2015 to file a claim for permanent benefits. Instead, the disagreement in this matter stems from what occurred after December, 2015. At some point in early 2016, plaintiff contacted the adjuster to advise he had additional pre-injury wages from his concurrent employment. The adjuster then reviewed plaintiff's additional information and concluded plaintiff should have been paid TTD benefits at a higher rate based on the additional concurrent employment wages, resulting in a total underpayment of \$466.64. The carrier then issued a check to plaintiff on July 28, 2016 for the underpayment. The carrier then also notified the DWC of the underpayment by EDI. In that filing, it was noted that the payment was not for an additional period of temporary, total disability but, rather, was for an underpayment as to rate. Steve Mason from the Department of Workers Claims testified that notification of an underpayment of TTD benefits that does not extend the date through which TTD were paid does not generate another WC3 notice letter to the claimant involved. He explained the defendant's second, supplemental S1 filed on October 17, 2016 showed the same beginning and ending dates for TTD payments as the original S1, but the total was now \$4154.64, which was \$466.64 more than the original S1.

Plaintiff recognizes his claim was filed more than two years after December 6, 2015. Indeed, it was filed more than two years after January, 2016. However, plaintiff maintains his statute of limitations was tolled by the by the defendant's actions in that it failed to report the proper benefits period for the TTD paid. In support of this argument, plaintiff points out he took the deposition of the adjuster, Patricia Stewart, and attached her case notes to her deposition. One of these notes plaintiff's claims shows that Stewart calculated TTD benefits to be paid through January 12, 2016. Plaintiff notes this coincides with the fact that he was released to return to work full duty on January 12, 2016, even though he had been released to light duty before that. However, the ALJ is not persuaded by this argument. First the handwritten notes to which plaintiff refers in Stuart's claim file do not actually indicate that TTD was or would be paid through January 12, 2016. Rather, that notation is one of several on that page and nothing else indicates that the adjuster concluded that TTD benefits should or would be paid through January 12, 2016. Moreover, if plaintiff would

have been paid an additional five weeks of TTD benefits beyond that which was reported to the DWC, the difference would've been far more than \$466.64, which is the only check amount included in any documentation in this claim. The fact that plaintiff does not have any evidence that a check, or checks, totaling more than \$466.64 after July 27, 2016 further supports the defendant's position that it never extended plaintiff's period of TTD benefits beyond December 6, 2015. For these reasons, the ALJ is not persuaded the defendant failed to accurately report the dates for which TTD benefits were paid. Therefore, it is determined these facts do not establish grounds to toll plaintiff's limitations period for filing his claim.

Plaintiff also argues that "the cumulative effect" of the carrier's "inaccuracies, inconsistencies and omissions" in adjusting the claim equitably estop the defendant from relying upon the statute of limitations defense. To invoke the "equitable estoppel" doctrine, a party must show (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question (2) reliance, in good faith, upon the conduct or statements of the party to be estopped, and (3) action or inaction based thereon of such a character as to change the position or the status of the party claiming the estoppel, to his injury, detriment, or prejudice. *Rivermont Inn, Inc. v. Bass Hotels & Resorts, Inc.*, 113 S.W.3d 636 (Ky. App. 2003). These same rules have been stated as: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention, or at least the expectation, that such conduct shall be acted upon by or influence, the other party or other persons; and (3) knowledge, actual or constructive, of the real facts. *Fluke Corp. v. Lemaster*, 306 S.W.3d 55 (Ky., 2010).

As applied to the present case, the ALJ is not persuaded the defendant should be equitably estopped from relying on the statute of limitations defense. First, the facts indicate that there were errors and/or inconsistencies in the carrier's internal system notes as to whether and when the supplemental TTD check was issued in 2016. However, there is nothing in the record to

indicate that plaintiff was ever aware of these errors until after this litigation began, so he cannot claim he relied on these errors to his detriment in filing his claim untimely. Indeed, plaintiff has never indicated he delayed filing his claim beyond December 6, 2017 due to any of the defendant's actions. Given these facts, the ALJ concludes the defendant is not equitably estopped from relying upon its statute of limitations defense.

In addition, plaintiff also argues the fact that he missed work on December 20, 2016 for his appointment with Dr. Vermuri, and was only paid sick time instead of temporary, total disability, should toll the limitations to at least two years after that office visit, up to December 20, 2018, which would make his October 31, 2018 filing timely. However, although the record supports plaintiff took off work and saw Dr. Vermuri on December 20, 2016, there is nothing to indicate he was actually temporarily, totally disabled for that one day. Indeed, plaintiff previously acknowledged he had reached maximum medical improvement as of January 12, 2016. In order to qualify for TTD benefits, plaintiff would have to be unable to perform his regular or customary work AND not be at maximum medical improvement. As neither requirement appears satisfied in this instance, the ALJ is not persuaded these provide grounds for tolling plaintiff's statute of limitations.

Finally, plaintiff argues the alleged supplemental TTD check that was issued on July 27, 2016, and then voided, and then re-issued in October, 2016 was never received by plaintiff. He further argues the actual receipt of the check controls the date from which the limitations period runs. However, that argument does not apply in this case because the July, 2016 or October, 2016 supplemental check was not paid for any dates beyond December 6, 2015; rather, the supplemental check was to make up the shortfall of the previous TTD payments based on the additional, concurrent wage information plaintiff supplied after December 6, 2015. For the same reasoning expressed by the Kentucky Workers Compensation Board in *McDowell v. City of Ashland*, Claim No. 2006-87100 (December 13, 2019) the ALJ does not believe that a supplemental payment to correct the rate of TTD benefits amounts to an extension of the

period of benefits from which a claimant's limitations period runs.

For all these reasons, it is determined plaintiff's claim is barred by the statute of limitations and KRS 342.185 and, therefore, is dismissed, with prejudice.

In the March 9, 2020, Order, the ALJ, on his own motion, corrected the date of the Opinion and Order from February 6, 2020, to March 6, 2020. Significantly, Smiser did not file a petition for reconsideration contesting the ALJ's findings of fact.

Importantly, all three arguments contest the ALJ's findings of fact. Therefore, our sole task on appeal is to determine whether substantial evidence supports the ALJ's decision. We conclude it does.

The standard of review applicable herein is articulated best by the Kentucky Court of Appeals in the case of Bowerman v. Black Equipment Company, 297 S.W3d 858 (Ky. App. 2009):

KRS 342.285 designates the ALJ as finder of fact, and has been construed to mean that the factfinder has the sole discretion to determine the quality, character, weight, credibility, and substance of the evidence, and to draw reasonable inferences from the evidence. *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985); *McCloud v. Beth-Elkhorn Corporation*, 514 S.W.2d 46, 47 (Ky. 1974). Moreover, an ALJ has sole discretion to decide whom and what to believe, and may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977).

KRS 342.285 also establishes a "clearly erroneous" standard of review for appeals concerning factual findings rendered by an ALJ, and is determined based on reasonableness. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). Although an ALJ must recite sufficient facts to permit meaningful appellate review, KRS 342.285 provides that an ALJ's decision is "conclusive and

binding as to all questions of fact,” and that the Board “shall not substitute its judgment for that of the [ALJ] as to the weight of evidence on questions of fact[.]” *Shields v. Pittsburgh & Midway Coal Mining Co.*, 634 S.W.2d 440, 441 (Ky. App. 1982). In short, appellate courts may not second-guess or disturb discretionary decisions of an ALJ unless those decisions amount to an abuse of discretion. *Medley v. Board of Education, Shelby County*, 168 S.W.3d 398, 406 (Ky. App. 2004). Discretion is abused only when an ALJ’s decision is arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Downing v. Downing*, 45 S.W.3d 449, 454 (Ky. App. 2001).

Id. at 866.

Further restricting our review is the fact that Smiser failed to file a petition for reconsideration contesting the ALJ’s findings of fact. Consequently, pursuant to KRS 342.285, in the absence of a petition for reconsideration, concerning questions of fact, the Board is limited to a determination of whether there is substantial evidence in the record to support the ALJ’s conclusion. Stated otherwise, where no petition for reconsideration was filed prior to the Board’s review, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is any evidence of substance in the record supporting the ALJ’s ultimate conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000).

Smiser first asserts the evidence shows the insurer failed to report the proper benefits period paid for Smiser’s concurrent employment with the fire department. Smiser cites several pages within Stewart’s deposition testimony that allegedly indicate Stewart was aware Smiser returned to his concurrent employment on January 12, 2016. Smiser directs our attention to Stewart’s handwritten notes, Exhibit 5 to her deposition, that allegedly establish she was aware Smiser returned to

full duty as a volunteer firefighter on January 12, 2016. Smiser asserts, in relevant part, as follows: “As pointed out in her testimony and her records numerous times, she was aware that he returned to his employment, on light duty, with the Defendant on 12/9/15, and returned to his concurrent employment on 1/12/16, after being released to full duty. (Stewart Deposition, pages 14, 17, 18, 32 and 33.) We affirm on this issue.

We acknowledge Stewart, throughout her deposition, testified Smiser was released to return to his employment as a firefighter, without restrictions, on January 12, 2016. However, as the March 6, 2020, Opinion and Order indicates, the ALJ concluded *nothing within Stewart’s deposition testimony, including exhibits, demonstrates TTD benefits were paid for Smiser’s concurrent employment as a firefighter through this date.* The ALJ held, in pertinent part, as follows:

Moreover, if plaintiff would have been paid an additional five weeks of TTD benefits beyond that which was reported to the DWC, the difference would’ve been far more than \$466.64, which is the only check amount included in any documentation in this claim. The fact that plaintiff does not have any evidence that a check, or checks, totaling more than \$466.64 after July 27, 2016 further supports the defendant’s position that it never extended plaintiff’s period of TTD benefits beyond December 6, 2015.

Indeed, Stewart unequivocally testified that the check issued to Smiser for the TTD benefits rate differential when factoring in his concurrent employment as a firefighter was for \$466.64 and covered the period from October 12, 2015, through December 6, 2015. This amount and duration are reflected throughout certain exhibits attached to Stewart’s deposition. Mason’s deposition testimony and the deposition exhibits, specifically the S1’s attached as Exhibits 3 and 5, bolster Stewart’s testimony. This constitutes substantial evidence supporting the ALJ’s finding Oldham County did

not fail to accurately report the dates for which TTD benefits were paid for Smiser's concurrent employment as a firefighter.

We note that, while wages from concurrent employment are utilized in calculating the average weekly wage pursuant to KRS 342.140(5), the employment during which the injury occurred is the relevant employment for determining a worker's entitlement to TTD benefits including the duration of benefits. In Double L. Construction v. Mitchell, 182 S.W.3d 509 (Ky. 2005), the Kentucky Supreme Court decreed:

Central Kentucky Steel v. Wise, supra, stands for the principle that if a worker has not reached MMI, a release to perform minimal work rather than “the type that is customary or that he was performing at the time of his injury” does not constitute “a level of improvement that would permit a return to employment” for the purposes of KRS 342.0011(11)(a). 19 S.W.3d at 659. The case did not involve concurrent employments and referred only to Wise's job as a steelworker. We have concluded, therefore, that when the decision is applied to a case in which a worker is injured in one concurrent employment but is unable temporarily to perform another, both the customary type of work and the work the individual was performing at the time of the injury refer to work performed in the employment in which the injury occurred. We reach this conclusion, in part, because we are convinced that a worker whose injury renders him temporarily unable to perform the work in which the injury occurred should not be penalized for performing what work he is able to do. Nor are we convinced that his employer should be absolved from liability for TTD benefits. The claimant's injury occurred in his employment as a construction carpenter; therefore, his customary work for the purposes of KRS 342.0011(11)(a) was construction carpentry, including the duties that he was performing at the time he was injured.

Id. at 514.

Consequently, as Smiser's injury occurred at his job with Oldham County, his entitlement to TTD benefits and the duration of those benefits are determined exclusively by his job as a dispatcher with Oldham County. Thus, the date of Smiser's return to full duty employment as a firefighter has no bearing on the duration of TTD benefits, further bolstering the ALJ's ultimate determination that Oldham County did not fail to accurately report the dates for which TTD benefits were paid for Smiser's concurrent employment as a firefighter.

Also critical is the parties' stipulation at the BRC that TTD benefits were paid from October 12, 2015, through December 6, 2015. Smiser did not file a motion at any point in this litigation requesting the ALJ to relieve him of this stipulation. Pursuant to 803 KAR 25:010 §13(12), "[o]nly contested issues shall be the subject of further proceedings." Therefore, Smiser is precluded from asserting Oldham County paid TTD through January 12, 2016, for his concurrent employment.

Next, Smiser asserts the July 28, 2016, TTD check for his concurrent employment indicates TTD benefits were paid through December 6, 2016, instead of December 6, 2015. Therefore, as Smiser argues, since December 6, 2016, "is less than two years before the date of the filing of this action, and this action would be timely filed within 2 years from the date of cessation of benefits." This argument on appeal can be disposed of in short order.

The evidence in the record in the form of Stewart's testimony indicates there is a typographical error, at least within Underwriters' internal documents, indicating TTD benefits were paid through December 6, 2016, instead of December 6, 2015. A review of Exhibit 10 to Stewart's deposition, the stub for the July 2016 check,

reveals the typographical error appears on the check stub. Further, a review of Stewart's payment ledger, marked as Exhibit 12, also reveals the typographical error. However, a review of Exhibit 2 to Stewart's deposition, a copy of the cashed check, reveals this error was not printed anywhere on the check itself.

Assuming, *arguendo*, this typographical error was indeed printed on the documentation sent to Smiser, we observe that in his first argument on appeal, Smiser maintains that he returned to full duty employment as a volunteer firefighter on *January 12, 2016*. This admission cuts against the sincerity of his alleged belief that he would have been paid TTD benefits for nearly a full year *after* returning to full duty work. Similarly, the amount of the check - \$466.64 – cuts against this assertion. Further, the parties, at the BRC, stipulated that TTD benefits were paid from October 12, 2015, through December 6, 2015.

The typographical error within Underwriters' internal documents ultimately has no bearing on the statute of limitations issue. We affirm on this issue.

Finally, Smiser alleges he never received the alleged October 17, 2016, TTD benefits check which corrected the typographical error. While we acknowledge this issue is fraught with confusion due to irregularities in Underwriters' recordkeeping, a review of Stewart's deposition reveals that a second TTD benefits check was not issued to Smiser in October 2016. Even though Stewart testified that there may be duplicate entries within her payment ledger for a check totaling \$466.64, a review of Exhibit 12 reveals those entries share the same check number – i.e. check number 960515. Stewart also testified that she has encountered duplicate entries for the same check in the past. Despite Smiser's arguments to the contrary, there is no

evidentiary proof in the record supporting the assertion that another check for TTD benefits was issued to Smiser at any point during October 2016.

Consequently, concerning all issues raised on appeal, we **AFFIRM** the March 6, 2020, Opinion and Order.

ALL CONCUR.

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