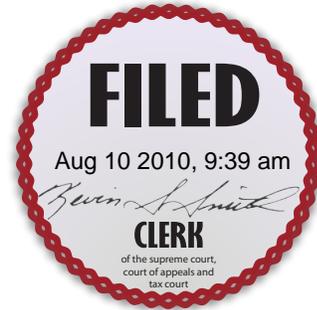


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE**  
**COURT OF APPEALS OF INDIANA**

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INDIANA SPINE GROUP, PC, )  
 )  
Appellant-Plaintiff, )  
 )  
vs. )  
 )  
SCENIC HILLS CARE CENTER, )  
 )  
Appellee-Defendant. )

No. 93A02-1003-EX-313

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APPEAL FROM THE WORKER'S COMPENSATION BOARD OF INDIANA  
The Honorable Linda Peterson Hamilton, Chairperson  
Cause No. P-199678

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**August 10, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Indiana Spine Group, PC (ISG) appeals the dismissal of its Application for Adjustment of Claim for Provider Fee (the Application) by the Worker's Compensation Board (the Board) in favor of Scenic Hills Care Center (Scenic Hills). ISG presents two issues on appeal, which we consolidate and restate as follows: Did the Board err in determining that it did not have jurisdiction because the Application was filed outside the statute of limitations set out in the Worker's Compensation Act (the Act)?

We reverse and remand.

On March 7, 2005, Jennifer Andrews sustained a work-related injury while employed by Scenic Hills. Andrews received weekly TTD benefits under the Act through March 2006. Further, pursuant to an agreement between the parties, Scenic Hills' worker's compensation insurer, Wausau, made a lump-sum, \$6500 PPI payment to Andrews on or about March 31, 2006.

As part of the compensable claim, Scenic Hills also provided medical treatment to Andrews through ISG on May 5, July 7, and August 24, 2005. Following each approved treatment, ISG issued a bill to Wausau for \$3231.50. Wausau made timely, partial payments on the bills in June, August, and September, respectively. In sum, Wausau paid a total of \$1492.25, leaving a remaining unpaid balance of over \$8000.

On June 17, 2009, ISG filed the instant Application seeking the balance owed. Scenic Hills responded with a motion to dismiss the Application arguing that it was filed outside the statute of limitations set forth in Ind. Code Ann. § 22-3-3-27 (West, Westlaw through 2010 2<sup>nd</sup> Regular Sess.). Specifically, Scenic Hills claimed that the Application was required to be filed within two years of the date compensation was last paid to Andrews. Thus, according

to Scenic Hills, ISP should have filed the Application on or before March 31, 2008.

On October 28, 2009, a single hearing member of the Board dismissed the cause for lack of jurisdiction. ISG timely filed an application for review by the Full Board. Following a hearing, the Full Board issued an order, on February 17, affirming the single hearing member's decision and finding that the Application was barred by the two-year statute of limitations set out in I.C. § 22-3-3-27. ISG now appeals.

The material facts and the issue we must decide in this case are identical to those we address today in *Indiana Spine Group, PC, v. Pilot Travel Centers, LLC*, no. 93A02-1003-EX-315 (Ind. Ct. App. 2009). In both cases, there is no dispute that the employee was entitled to benefits under the Act, including the medical care provided by ISG, which had been authorized by the employer. The issue presented by the Application in each case was the amount of ISG's bills that the employer was required to pay (in other words, the pecuniary liability of the employer), not whether the bills were to be paid at all. Thus, neither Application sought modification of the award of worker's compensation benefits to the employee based upon changed conditions.

As explained in *Indiana Spine Group, PC, v. Pilot Travel Centers, LLC*, the Act is silent on the statute of limitations applicable to claims involving the pecuniary liability of employers to medical service providers. Specifically, we held that the two statutes of limitations set out in the Act, I.C. § 22-3-3-3 (West, Westlaw through 2010 2<sup>nd</sup> Regular Sess.) and I.C. § 22-3-3-27, do not apply in this context to bar ISG's claim. With respect to the former, we observed that the statute involved the time period for initiation of a worker's compensation claim by the employee, a matter not in dispute. Slip op. at 3-4. ("there is no

dispute that Wetnight timely sought benefits under the Act or that he presented a compensable injury claim”). We further held that the latter statute, upon which the Board based its dismissal, was inapplicable because there was no *modification* of an award being sought.

For the reasons more fully expressed in *Indiana Spine Group, PC, v. Pilot Travel Centers, LLC*, we hold here that the Board erred in dismissing ISG’s claim pursuant to I.C. § 22-3-3-27. On remand, ISG shall be entitled to a determination on the merits of its application for adjustment of claim for provider fee.

Reversed and remanded.

BARNES, J., and CRONE, J., concur.