

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H010489**

JOHN A. BAKER, EMPLOYEE	CLAIMANT
PERFORMANCE FOOD GROUP, INC., EMPLOYER	RESPONDENT
INDEMN. INS. CO. OF NO. AM., CARRIER	RESPONDENT

OPINION FILED FEBRUARY 10, 2023

Hearing before Administrative Law Judge O. Milton Fine II on February 8, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. David C. Jones, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing on the motion was conducted on February 8, 2023, in Little Rock, Arkansas. No testimony was taken in the case. Claimant, who according to Commission records is *pro se*, failed to appear at the hearing. Without objection, the Commission file on this claim has been incorporated herein in its entirety by reference. Admitted into evidence was Respondents' Exhibit 1, forms, pleadings and correspondence related to the claim, consisting of 28 numbered pages.

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The record reflects the following procedural history:

On or about December 16, 2020, a Form AR-1 was filed in this case, reflecting that Claimant purportedly sustained an injury to his left shoulder on August 3, 2020, while lifting a case of product during the making of a delivery. Also on December 16, 2020, Respondents filed a Form AR-2, representing that they accepted the injury as compensable and were paying medical and indemnity benefits pursuant thereto. Claimant has not filed a Form AR-C.

Attorney Daniel E. Wren entered his appearance before the Commission on this matter on April 23, 2021. However, he filed a motion to withdraw on August 12, 2021. In an order entered on August 25, 2021, the Full Commission granted the motion under AWCC Advisory 2003-2.

On December 5, 2022, Respondents filed the instant Motion to Dismiss and brief in support thereof. Therein, they argued that over six months had elapsed without Claimant requesting a hearing or taking any other action in pursuit of his claim. They also asserted that it had been more than a year since he had undergone any authorized treatment on his shoulder. The Commission on December 16, 2022, wrote Claimant, asking for a response to the motion within twenty (20) days. The letter was sent via certified and first-class mail to the address for Claimant listed in the file. “Vicki Baker” signed for the certified letter on December 28, 2022; and the first-class correspondence was not returned. Nonetheless, no response to the motion was forthcoming from Claimant.

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On January 10, 2023, a hearing on the Motion to Dismiss was scheduled for February 8, 2023, at 9:30 a.m. at the Commission in Little Rock. The notice was sent to Claimant by first-class and certified mail at the same address as before. In this instance, the certified letter was claimed by Claimant on January 13, 2023; and as before, the first-class letter was not returned. The evidence thus preponderates that Claimant received notice of the hearing.

The hearing on the Motion to Dismiss proceeded as scheduled on February 8, 2023. Again, Claimant failed to appear. But Respondents appeared through counsel and argued for dismissal of the action under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702(a)(4) & (d) (Repl. 2012).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this matter.
2. No Form AR-C has ever been filed in connection with his matter.
3. No other document before the Commission in this matter constitutes a claim for additional benefits.
4. Respondents' Motion to Dismiss is denied because no claim exists to be subject to dismissal.

III. DISCUSSION

AWCC 099.13 provides:

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution.

See generally Johnson v. Triple T Foods, 55 Ark. App. 83, 85, 929 S.W.2d 730

(1996). (Emphasis added) In turn, §§ 11-9-702(a)(4) & (d) read:

(4) If within six (6) months after the filing of a claim for compensation no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

...

(d) If within six (6) months after the filing of a claim for additional compensation no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within limitation period specified in subsection (b) of this section.

Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), Respondents must prove by a preponderance of the evidence that dismissal should be granted. The standard “preponderance of the evidence” means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

No Form AR-C has been filed in this case. That is the means for filing a “formal claim.” *See Yearwood v. Wal-Mart Stores, Inc.*, 2003 AR Wrk. Comp.

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LEXIS 739, Claim No. F201311 (Full Commission Opinion filed June 17, 2003).

See also Sinclair v. Magnolia Hospital, 1998 AR Wrk. Comp. LEXIS 786, Claim No.

E703502 (Full Commission Opinion filed December 22, 1998)(a claim is “typically”

filed *via* a Form AR-C). While a Form AR-1 was filed, that does not suffice to

instigate a claim. *Id.*

Per Ark. Code Ann. § 11-9-702(c) (Repl. 2012):

A claim for additional compensation must **specifically** state that it is a claim for additional compensation. Documents which do not **specifically** request additional benefits shall not be considered a claim for additional compensation.

(Emphasis added) *See White Cty. Judge v. Menser*, 2020 Ark. 140, 597 S.W.3d 640.

My review of the Commission’s file discloses no document sufficient to constitute a filing of a claim for additional benefits under the standard cited above. Because no claim has been filed, it follows that there is no claim subject to dismissal per Respondents’ motion. The Motion to Dismiss thus must be, and hereby is, denied.

CONCLUSION

In accordance with the findings of fact and conclusions of law set forth above, the Motion to Dismiss is hereby denied.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge