

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H107844**

GARRICK McCOY, EMPLOYEE	CLAIMANT
TRI STATE ENTERPRISES, INC., EMPLOYER	RESPONDENT
TRAVELERS CASUALTY INS. CO. OF AMER., CARRIER	RESPONDENT

OPINION FILED APRIL 4, 2022

Hearing before Administrative Law Judge O. Milton Fine II on March 31, 2022, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Guy Alton Wade, 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 March 31, 2022, 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 18 numbered pages.

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The record reflects the following procedural history:

On September 27, 2021, a Form AR-1 was filed in this case, reflecting that Claimant purportedly sustained an injury to his lower back on August 23, 2021. Per the Form AR-2 that was filed on September 28, 2021, Respondents controverted the claim. Claimant never filed a Form AR-C.

On February 9, 2022, Respondents filed the instant Motion to Dismiss. The Clerk of the Commission assigned the file to me on February 10, 2022; and on that same day, my office 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 on the filings in the file. A “Michael Murphy” signed for the certified letter on February 14, 2022; and the first-class correspondence was not returned. Nonetheless, no response was forthcoming from Claimant.

On March 8, 2022, a hearing on the motion was scheduled for March 31, 2022, at 9:00 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. The United States Postal Service has no record concerning whether the certified letter was claimed; but regardless, 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 March 31, 2022. Again, Claimant failed to appear. But Respondents appeared through counsel and argued for dismissal of the action under AWCC R. 099.13.

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 an initial claim for 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) 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.

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373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

As noted above, 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. 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 in this case, that does not suffice to instigate a claim. *Id.*

I recognize, however, that other means exist to file a claim for initial benefits other than a Form AR-C. In *Downing v. Univ. of Ark.*, 1999 AR Work. Comp. LEXIS 979, Claim No. E209360 (Full Commission Opinion filed March 16, 1999), the Commission stated:

While it appears that no court has addressed the minimum requirements under Arkansas law to state an adequate "petition for review", in *Cook v. Southwestern Bell Telephone Company*, 21 Ark. App. 29, 727 S.W.2d 862 (1987) the Arkansas Court of Appeals discussed the minimum requirements necessary for correspondence to the Commission to constitute a claim for additional compensation for the purposes of tolling the applicable Statute of Limitations. In that case, the Court held that an attorney's correspondence notifying the Commission that he has been employed to assist a claimant in connection with unpaid benefits is sufficient to state a claim for additional compensation where the correspondence also lists the claimant's name, the employer's name and the WCC file number. *Id.*, See also, *Garrett v. Sears Roebuck and Company*, 43 Ark. App. 37, 858 S.W.2d 146 (1993). Moreover, we have interpreted *Cook* as requiring that correspondence intended as a claim for additional benefits (1) identify the claimant, (2) indicate that a compensable

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injury has occurred, and (3) convey the idea that compensation is expected.

(Citations omitted)

My review of the Commission's file discloses no document sufficient to constitute a filing of a claim for initial benefits under the factors 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