

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H301500**

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| AMBER POTTS, EMPLOYEE | CLAIMANT |
| WAL-MART ASSOCIATES, INC., SELF-INSURED EMPLOYER | RESPONDENT |
| WAL-MART CLAIMS SVCS., THIRD PARTY ADMR. | RESPONDENT |

OPINION FILED DECEMBER 14, 2023

Hearing before Chief Administrative Law Judge O. Milton Fine II on December 13, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Rick Behring, Jr., 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 December 3, 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. Admitted into evidence without objection were the following: Commission Exhibit 1 and Respondents' Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of 21 and 27 numbered pages, respectively.

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The record reveals the following procedural history:

The First Report of Injury or Illness, filed on March 6, 2023, reflects that Claimant purportedly suffered an injury to her hands on October 10, 2022, from lifting meat in a cooler at work. Per the Form AR-2 filed on that same day, Respondents controverted the claim in its entirety. Respondents' counsel entered his appearance on July 25, 2023.

In correspondence to the Commission received on April 7, 2023, Claimant wrote:

To whom it may concern:

May I please request a hearing on the denial of my workers['] compensation. For surgery needed to fix my hands, and the horrible pain. I appreciate the time and assistance.

Sincerely,

Amber Lynn Potts
Claim # H301500

The matter was assigned to the Legal Advisor Division. But after no resolution was reached during the Legal Advisor conference, the file was returned to the Clerk of the Commission for reassignment to an administrative law judge.

Upon assignment to Administrative Law Judge Chandra Black on July 28, 2023, her office issued prehearing questionnaires to the parties. However, Claimant failed to file a questionnaire response. For that reason, Judge Black on August 18, 2023, returned the file to the Commission's general files.

The record reflects that no further action was taken on the case until October 23, 2023, when Respondents filed the instant Motion to Dismiss under

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Ark. Code Ann. § 11-9-702 (Repl. 2012) and AWCC R. 099.13, along with a brief in support thereof. On October 25, 2023, Judge Black wrote Claimant, requesting a response to the motion within 20 days. This correspondence was sent by both certified and first-class mail, but my review shows that there was a typographical error in the address used; while Claimant’s address in Hope, Arkansas is listed in the file and on her return envelope containing the hearing request as “167 Hempstead 15,” the letters were mailed to “167 Hempstead 16.” Unsurprisingly, the United States Postal Service returned both letters with the notation “NO SUCH NUMBER”; and no response from Claimant was forthcoming.

On November 14, 2023, a hearing on Respondents’ motion was scheduled for December 13, 2023, at 10:30 a.m. at the Commission. The Notice of Hearing was sent to Claimant by certified and first-class mail to the correct address in this instance. Claimant signed for the certified letter on November 28, 2023; and the first-class letter was never returned.

The hearing proceeded as scheduled on December 13, 2023. Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under, inter alia, Rule 13.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include documents and other matters properly before the Commission, the following Findings of Fact and Conclusions of Law are hereby made in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

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1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The parties were provided reasonable notice of the Motion to Dismiss and of the hearing thereon.
3. Claimant has failed to prosecute her claim.
4. Dismissal of this claim is warranted under AWCC R. 099.13.
5. The claim is hereby dismissed *without prejudice*.

III. DISCUSSION

AWCC R. 099.13 reads:

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)(discussing, *inter alia*, Rule 13).

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.*

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

(Citations omitted)

My review of the Commission's file discloses a document sufficient to constitute a filing of a claim for initial benefits under the factors cited above. That document is Claimant's April 7, 2023, hearing request.

The evidence adduced at the hearing shows that Claimant has taken no action in pursuit of her claim since making the hearing request over eight months ago. Moreover, she failed to appear on the hearing to argue against dismissal of the claim, despite the evidence clearly showing that both she and Respondents

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were provided reasonable notice of the Motion to Dismiss and of the hearing thereon. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, it is unnecessary to address the applicability of Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012).

That leaves the question of whether the dismissal of the claim should be with or without prejudice. The Commission possesses the authority to dismiss claims with prejudice. *Loosey v. Osmose Wood Preserving Co.*, 23 Ark. App. 137, 744 S.W.2d 402 (1988). In *Abo v. Kawneer Co.*, 2005 AR Wrk. Comp. LEXIS 510, Claim No. F404774 (Full Commission Opinion filed November 15, 2005), the Commission wrote: “In numerous past decisions, this Commission and the Appellate Courts have expressed a preference for dismissals *without prejudice*.” (Emphasis added)(citing *Professional Adjustment Bureau v. Strong*, 75 Ark. 249, 629 S.W.2d 284 (1982)). Respondents at the hearing asked for a dismissal without prejudice. Based on the above authorities, I agree and find that the dismissal of this claim should be and hereby is entered *without prejudice*.¹

CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim is hereby dismissed *without prejudice*.

¹“A dismissal ‘without prejudice’ allows a new [claim] to be brought on the same cause of action.” BLACK’S LAW DICTIONARY 825 (abridged 5th ed. 1983).

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IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge