

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G702350

NANCY HEITMAN (FORMERLY COONEY), CLAIMANT
EMPLOYEE

ARKANSAS DEPARTMENT OF CORRECTION, RESPONDENT NO. 1
EMPLOYER

PUBLIC EMPLOYEE CLAIMS DIVISION, RESPONDENT NO. 1
INSURANCE CARRIER/TPA

DEATH & PERMANENT TOTAL DISABILITY TRUST FUND RESPONDENT NO. 2

OPINION FILED AUGUST 22, 2025

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE ANDY L. CALDWELL, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE CHARLES H. McLEMORE, JR., Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 was excused from participating in the proceeding.

ORDER

The claimant in the above-styled matter moves to file a belated brief.

The Full Commission grants the claimant's motion.

An administrative law judge filed an amended opinion on March 21, 2025. The administrative law judge found that the claimant failed to prove she was entitled to permanent partial disability benefits or the costs associated with an impairment evaluation. The claimant filed a timely petition for review. The Clerk of the Commission corresponded with the parties on March 21, 2025 and established an initial briefing schedule. The claimant filed a timely request for an extension, and the Clerk of the Commission

established a revised briefing schedule: "Claimant's brief will now be due 4/18/2025. Respondents' brief will be due 5/2/2025. Claimant's reply brief will be due 5/9/2025."

The claimant now moves to file a belated brief. The claimant states, among other things, "The deadline for the brief to be filed was inadvertently calendared for incorrect date (April 25, 2025 instead of April 18, 2025....The undersigned respectfully requests leave to file a belated Brief in Support of the Petition for Review."

The Full Commission grants the claimant's motion to file a belated brief. *See Foster v. Goodwill Industries of Arkansas*, Full Commission Opinion filed October 17, 2024 (H204851). We note that both parties have submitted briefs on appeal. The Full Commission directs the Clerk of the Commission to issue a final briefing schedule, so that the claimant may file a reply brief if desired, and so that the matter may be placed on our submission docket for *de novo* review.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant's Motion to File a Belated Brief should be granted.

The claimant filed a timely notice of appeal to the Full Commission. The claimant's brief was originally due on April 4, 2025, but she requested an extension of time to file her brief, which was granted by the Clerk's office with no objection by the respondents. As a result of the extension, the claimant's brief was due on April 18, 2025. The claimant tendered her brief on April 25, 2025, and was advised by the Clerk's office it could not be accepted since it was filed late. On May 2, 2025, the claimant filed a Motion to File Belated Brief stating that the deadline for the brief to be filed was inadvertently calendared for April 25, 2025, instead of April 18, 2025.

Our past cases reflect when a brief is not timely filed, a motion to file a belated brief must be denied. See *Webb v. Webb*, Full Commission Opinion filed August 8, 2011 (F907467); *Garth v. Wal-Mart Associates, Inc.*, Full Commission Opinion filed December 17, 2009 (F803409); *Hickey v. Gardisser Constr.*, Full Commission Opinion filed January 13, 2008 (F609988 & F612976).

In a 2009 case before the Full Commission, we considered this exact issue, ultimately denying the claimant's motion to file a belated brief:

The Claimant's brief will be due October 16, 2009. The Claimant did not file a brief until October 22, 2009. The claimant moves to file a belated brief and states in part, "The Claimant's Brief was filed 6 days late due to the error of Claimant's counsel in misreading the September 10, 2009 letter from the Commission. " Because the claimant's motion was untimely filed, we find that it must be denied. See *Franklin v. Cross County Judge, Workers' Compensation Commission F810601* (July 31, 2009).

Petty v. Telling Industries, Inc., Full Commission Opinion Filed December 7, 2009 (F812228).

A review of the Full Commission opinions in the past reveals the vast majority of motions to file belated briefs have been granted because there was no objection by the opposing party. In the case before us, the respondent has filed an objection.

In the very few cases where a motion to file a belated brief has been granted with an objection filed by the opposing party, there has been a compelling reason or good cause to grant the motion. See *Darrell Barton v. Arkansas State University*, Full Commission Opinion filed May 28, 2010 (F705259) and *Sara J. Mickey v. Arkansas Methodist Hospital*, Full Commission Opinion filed August 21, 2002 (F002633).

In *Monica Condrey v. Cedar America*, Full Commission Opinion filed August 1, 2001 (E914507), the claimant filed a motion to file a belated brief attributing the late filing of the brief due to his business travel schedule. Even though it is not noted that the respondents objected to the motion, the Full

Commission, on its own, denied the motion stating, “In our opinion this does not justify an extension.”

The Full Commission stated in *John Kinkade v. Tri County Ranch & Farm Supply*, Full Commission Opinion filed October 7, 2013 (G007478), “Counsel for claimant acknowledges that his brief was not timely filed ‘due to a simple mistake caused by a busy schedule’... After our consideration of the Claimant’s motion, Respondents’ response thereto, and all other matters properly before the Commission, we find that the Claimant’s Motion to file a belated brief must be and hereby is, denied.

Here, the majority relies on *Foster v. Goodwill Industries of Arkansas* to grant the claimant’s motion, Full Commission Opinion filed October 17, 2024 (H204851). However, our ruling in *Foster* was based on an internal error within the Commission wherein the Clerk’s office failed to serve the briefing schedule on the respondent’s attorney. *See Id.* In the present case, the claimant’s attorney simply erred in properly entering the briefing schedule into his personal calendar. There is no correlation between this issue and the facts in *Foster*.

Our precedent is clear that an untimely filed motion to file a belated brief should be denied, especially when the opposing party has objected, unless under extraordinary circumstances or for good cause shown. There are no extraordinary circumstances in this matter.

To grant this motion when the opposing party has objected would represent the first time the Full Commission has granted a motion to file a belated brief where the attorney requesting the motion offers no compelling reason or good cause for the late filing, simply stating his brief was not timely filed because of his own clerical error. Therefore, the claimant's motion should be denied.

Accordingly, for the reasons set forth above, I must dissent.

MICHAEL R. MAYTON, Commissioner