

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H304290**

ALAN L. KEUNE, DEC'D, EMPLOYEE	CLAIMANT
GRANITE MTN. QUARRIES 1, EMPLOYER	RESPONDENT
ACIG INS. CO., CARRIER	RESPONDENT

OPINION FILED MAY 8, 2025

Hearing before Chief Administrative Law Judge O. Milton Fine II on May 7, 2025, in Little Rock, Pulaski County, Arkansas.

Claimant through his widow, Holly Keune, *pro se*, not appearing.

Respondents represented by Ms. Autumn Clark Boatright, Attorney at Law, Pine Bluff, Arkansas.

I. BACKGROUND

This matter comes before the Commission on the Motion to Dismiss by Respondents. A hearing on the motion was conducted on May 7, 2025, in Little Rock, Arkansas. Testimony was taken from Claimant's widow, Holly Keune, who appeared on his behalf. Admitted into evidence was Commission Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of 16 pages.

The record reflects the following procedural history:

Per the First Report of Injury or Illness filed on July 3, 2023, Claimant purportedly suffered an injury to his head and back while at work on June 29, 2023, when a truck struck a pile of boulders. According to the Form AR-2 that

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was also filed on July 14, 2023, Respondents controverted the claim in its entirety, stating:

This claim was turned in as a head/back claim due to [a] haul truck running into a mound of boulders. Mr. Keune then fell ill the night of 6/30/23 and he was taken to the hospital. He passed away on 7/6/23. Our position is that Mr. Keune's death is not the result of this incident.

No Form AR-C was filed.

The next event in this matter took place on November 6, 2024, when Respondents filed the instant Motion to Dismiss. Therein, they represented that Claimant propounded discovery to them on September 23, 2023; that they responded thereto on October 11, 2023, and that no activity on the claim has occurred since that time. They requested a dismissal under Ark. Code Ann. § 11-9-702 (Repl. 2012) and AWCC 099.13.

On November 7, 2024, the claim was assigned to Administrative Law Judge JayO. Howe to litigate. His office wrote Claimant on November 8, 2025, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Maumelle, Arkansas address listed for him in the file. "Holly Keune" signed for the certified letter on November 19, 2024, and the first-class letter was not returned.

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Mrs. Keune wrote the Commission on November 18, 2024:

To Whom It May Concern:

This letter serves as a formal response opposing the motion to dismiss and respectfully requests that a hearing be scheduled for consideration in the above-captioned Workers' Compensation case.

Respectfully,

/s/ Holly Keune

Holly Keune
Widow of Alan L. Keune

Based on this objection, Judge Howe took the Motion to Dismiss under advisement and issued preliminary notices and prehearing questionnaires to the parties on November 25, 2024. Respondents filed their Preliminary Notice on December 10, 2024. However, Mrs. Keune never filed a response. On February 5, 2025, the judge sent a letter to her by first-class mail, warning her that if she did not file her preliminary notice and prehearing questionnaire responses by February 24, 2025, a hearing would be scheduled on the Motion to Dismiss. This deadline came and went without a response from Mrs. Keune.

On March 7, 2025, a hearing on the Motion to Dismiss was scheduled for May 7, 2025, at 1:00 p.m. at the Commission in Little Rock. The Notice of Hearing was sent to Mrs. Keune via first-class and certified mail to the same address as was used successfully before. Mrs. Keune signed for the certified letter on March 18, 2025, while the first-class letter was not returned.

The hearing on the Motion to Dismiss proceeded as scheduled before the undersigned. Again, Claimant through Mrs. Keune failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under the foregoing authorities.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the hearing witness and to observe her demeanor, 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 claim.
2. All parties received notice of the Motion to Dismiss and the hearing thereon pursuant to AWCC R. 099.13.
3. Respondents have not proven by a preponderance of the evidence that Claimant has failed to prosecute this claim under AWCC R. 099.13.
4. Respondents have not proven by a preponderance of the evidence that this claim should be dismissed under Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012).

5. Respondents have not proven by a preponderance of the evidence that this claim should be dismissed under Ark. Code Ann. § 11-9-702(d) (Repl. 2012).
6. The Motion to Dismiss is hereby denied.
7. Claimant through his widow has requested a hearing on the issue of his estate's entitlement to initial benefits.
8. This claim will proceed to a hearing on the merits.

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). In turn, Ark. Code Ann. § 11-9-702(a)(4) & (d) (Repl. 2012) 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 periods specified in subsection (b) of this section.

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(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. 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. While a Form AR-1 was filed in this case, that does not suffice to instigate a claim. I recognize, however, that other means exist to file a claim for initial benefits other than a Form AR-C. 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 purpose of tolling the applicable Statute of Limitations. There, 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 Commission file number. See also *Garrett v. Sears Roebuck and Company*, 43 Ark. App. 37, 858 S.W.2d 146 (1993). My review of the Commission's file discloses a document sufficient to constitute a

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claim for initial benefits under *Cook, supra*. That document is Mrs. Keune's November 18, 2024, letter to the Commission—discussed above.

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Mrs. Keune admitted under oath that she received the preliminary notice and prehearing questionnaire by mail from Judge Howe's office. Asked to explain why she did not comply with the deadlines he had set for her completion of responses to these documents, she responded that she attempted without success to hire an attorney; and thereafter, she had simply forgotten about the matter. As for her continued failure to respond after Judge Howe sent her the warning on February 5, 2025, she testified that she never received it—despite the fact that it was correctly addressed. Claimant requested a hearing on her claim, in the event that it is not dismissed.

After consideration of the evidence, I find that while both Claimant and Respondents were given reasonable notice of the motion to dismiss hearing under Rule 13, she has not yet abridged that rule. By the same token, I find that while § 11-9-702(a)(4) & (d) provide that a claim “may” (clearly intending that the administrative law judge has discretion in the matter) be dismissed for failure to request a hearing within six months of the filing of the claim, dismissal is not yet warranted here. The Motion to Dismiss is thus denied.

Prehearing questionnaires will be immediately issued to the parties; and this matter will proceed to a full hearing on the merits.

However, Claimant’s estate is hereby advised that any failures to comply with deadlines in this matter in the future could well lead to Respondents moving once again for dismissal—this time successfully.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents’ Motion to Dismiss is hereby respectfully denied.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge