

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
AWCC FILE № H402162**

**SCARLETT R. ACUNA, EMPLOYEE**

**CLAIMANT**

**ALDI, INC. EMPLOYER**

**RESPONDENT**

**INDEMNITY INS. CO. OF NORTH AMERICA/  
BROADSPIRE SERVICES, CARRIER/TPA**

**RESPONDENT**

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**OPINION FILED 21 MARCH 2025**

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Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 5 March 2025 in Little Rock, Arkansas.

The *pro se* claimant failed to appear.

Ledbetter, Arnold, Cogbill & Harrison, Mr. Scott Zuerker, appeared for the respondents.

**STATEMENT OF THE CASE**

A hearing on the respondents' Motion to Dismiss was held on this matter in Little Rock, Arkansas, on 5 March 2025. This case relates to an accepted compensable injury sustained on or about 26 January 2024. The hearing record consisted of: Respondents' Exhibit № 1 (their motion), Respondents' Exhibit № 2 (the 22 January 2025 hearing notice letter), and Respondents' Exhibit № 3 (the 20 February 2025 hearing notice letter). I have blue-backed the First Report of Injury, two AR-2 Forms, a one-page letter from the claimant, and a returned Certified Letter to this opinion. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, 2010 Ark. App. LEXIS 549, these documents are being served on the parties in conjunction with this opinion.

A First Report of Injury was filed on 29 March 2024, indicating a lower back strain. On 3 April 2024, the respondents filed a Form AR-2 in which they represented that they had accepted the injury as compensable and were paying benefits. On 10 May 2024, the

claimant filed a letter that stated, “I am requesting a hearing.” An amended Form AR-2<sup>1</sup> was also filed on 10 May 2024 noting adjustments to the average weekly wage and temporary total disability (TTD) benefit rate. As noted above, those forms and the claimant’s letter are blue-backed to this opinion.

On 11 November 2024, the respondents filed the immediate motion seeking a dismissal of the claim for want of prosecution, citing Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012) and AWCC Rule 099.13. Therein, they argued that more than six months had passed without a bona fide request for a hearing on an issue ripe for litigation. They also argued that the claimant’s failure to appear via telephone for a prehearing conference that was scheduled for 1 October 2024 was evidence of her lack of prosecuting a claim. Additionally, they argued that the claimant failed to file a Form AR-C, the means by which formal claims for benefits are made to the AWCC.

Notice of the respondents’ motion was sent to the claimant, consistent with AWCC practices, via First Class Mail and Certified Mail, on 11 December 2024. After no response or objection was received by my office, a notice of a hearing on that motion was sent in the same fashion on 22 January 2025. The hearing was originally set for 19 February 2025; but it was canceled and rescheduled due to inclement weather. Notice of the rescheduled hearing was sent on 20 February 2025, resetting the date for 5 March 2025. When mailings are returned to the AWCC as not accepted or undeliverable, those mailings are appended to the claim’s file. This file includes a return of the certified letter from 22 January 2025, which I have also blue-backed to this opinion.

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<sup>1</sup> The box indicating “Initial Filing” was checked in error on the form.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole, which includes the exhibits admitted into evidence at the hearing and the documents blue-backed to this opinion, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2021):

1. The AWCC has jurisdiction over this matter.
2. The claimant has not filed a Form AR-C in connection with this matter.
3. No other filings constitute a claim for additional benefits under § 11-9-702(c).
4. The respondents' motion to dismiss must be denied because no claim exists that is subject to dismissal.

## ADJUDICATION

The respondents appeared on 5 March 2025, presented their motion, and offered supporting evidence into the record. Having reviewed the claimant's file, the respondents correctly state that no Form AR-C has been filed in this case. A respondent-employer's First Report of Injury is not sufficient to instigate a claim for initial benefits on the claimant's behalf. The Court of Appeals has held, however, that communication with the AWCC that is specific to a particular claim may be sufficient to serve as a claim, even in the absence of a Form AR-C. *See Garrett v. Sears, Roebuck & Co.* 43 Ark. App. 37, 858 S.W.2d 146 (1993) (citing *Cook v. Southwestern Bell Telephone Co.*, 21 Ark. App. 29, 727 S.W.2d 862 (1987)).

Claims for *additional* compensation, though, are controlled by § 11-9-702(c), which states:

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.

The forms and the claimant's letter (which simply stated "I am requesting a hearing") that are blue-backed to this opinion do not demonstrate compliance with the statute's requirements for filing a claim for additional benefits.

Under § 11-9-705(a)(3), the respondents must prove by a preponderance of the evidence that a dismissal should be granted. A "preponderance of the evidence" means the evidence having greater weight or greater 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). Here, the evidence preponderates a finding that no filing has been made that constitutes a claim for additional benefits under the requirements noted above. Thus, there is no claim that is subject to dismissal per the respondents' motion.

**ORDER**

Consistent with the findings of fact and conclusions of law set forth above, the Motion to Dismiss is hereby DENIED.

**SO ORDERED.**

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JAYO. HOWE  
ADMINISTRATIVE LAW JUDGE