

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H104272

JOSEPH B. BOTTER, EMPLOYEE

CLAIMANT

CITY OF BENTON, EMPLOYER

RESPONDENT

**MUNICIPAL LEAGUE WORKERS'
COMPENSATION TRUST, CARRIER/TPA**

RESPONDENT

OPINION FILED MAY 9, 2022

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant, Mr. Joseph B. Botter, was represented by Mr. Benjamin Hooten, Attorney at Law, Hot Springs, Arkansas. Claimant did not appear at the hearing. Mr. Hooten waived his appearance.

Respondents were represented by Mr. Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on March 29, 2022, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W.3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. § 11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

The record consists of the transcript of the March 29, 2022, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated by reference. Respondents submitted an exhibit packet, labeled as Respondents Exhibit No. 1, consisting of fourteen (14) pages, including Claimant's full duty release, Claimant's hearing request, Respondents' Motion to Dismiss, e-mail correspondence between Respondent's counsel and Claimant's counsel, Claimant's counsel's Motion to Withdraw,

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and e-mail correspondence between the parties and the Commission. Respondents' Exhibit No. 1 was admitted into evidence.

BACKGROUND

The evidence reflects that per the First Report of Injury or Illness filed on May 17, 2021, Claimant purportedly collapsed at the scene of a fire after pulling a hose. According to the Form AR-2 (also filed on May 17, 2021), Respondents controverted the claim in its entirety stating that the event was not work related. Claimant never filed a Form AR-C.

The evidence also reflects that via a handwritten, undated letter Claimant informed the Commission that he was requesting a hearing. Claimant provided a response to the Legal Advisor Questionnaire, which was received by the Commission on June 21, 2021. Due to the failure of efforts to set up either a mediation conference or a legal advisor conference, the file was assigned to adjudication and prehearing questionnaires were issued to the parties on June 29, 2021. The Claimant failed to file a timely response; thus, on July 28, 2021, the claim was returned to the Commission's general files.

On December 27, 2021, Respondents filed a Motion to Dismiss for failure to prosecute. On December 30, 2021, the Commission sent a Notice to Claimant advising him of Respondents' Motion and a deadline for filing a written response. On January 13, 2022, Claimant objected to the dismissal via a handwritten letter to the Commission. Pursuant to an order entered by the Commission on January 18, 2022, the Motion to Dismiss was held in abeyance and the deadlines for the prehearing questionnaire responses were set.

Claimant later obtained counsel, and on February 22, 2022, Claimant's counsel filed an Entry of Appearance on behalf of the Claimant for the limited purpose of representing him during

the Prehearing Telephone Conference. However, on March 7, 2022, prior to a prehearing telephone conference, Claimant's attorney of record filed a Motion to Withdraw and Dismiss the claim stating that after diligent research of the relevant law, Claimant and his attorney reached a joint decision that to continue any litigation would prove futile.

On March 7, 2022, Respondents notified the Commission by way of a letter that they concurred with Claimant's Motion to dismiss the claim. On March 8, 2022, the Commission advised Claimant of the Motion to Withdraw and Dismiss. There was no response from Claimant in that regard.

Pursuant to a Hearing Notice dated March 14, 2022, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss. Said hearing was scheduled for March 29, 2022, at 3:15 p.m., at the Arkansas Workers' Compensation Commission, 324 Spring Street, Hearing Room B, Little Rock, Arkansas. The Hearing Notice was sent to all parties; Claimant's notice was sent via certified mail and regular mail. United States Postal Service records indicate that the certified letter was delivered on March 16, 2022, at 10:07 a.m., and a signature was obtained.

Therefore, a hearing was in fact conducted as scheduled on Respondents' Motion to Dismiss. Respondents appeared through their attorney. As previously noted, Claimant's attorney waived his appearance, and Claimant did not appear at the hearing. Claimant has joined in on the motion for dismissal of his claim and his attorney's motion to withdraw.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the basis of 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 of this claim.
2. No Form AR-C has ever been filed in connection with this matter.
3. Nonetheless, Claimant's handwritten, undated, letter to the Commission constitutes a claim for initial benefits.
4. Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.
5. The evidence preponderates that Claimant has not made a *bona fide* request for a hearing or otherwise attempted to resolve his claim for workers' compensation benefits. Therefore, he has failed to timely prosecute this matter.
6. Respondents' Motion to Dismiss is hereby granted; the claim is hereby dismissed without prejudice under Commission Rule 099.13.
7. As the claim is dismissed, Claimant's counsel's motion to withdraw is rendered moot.

DISCUSSION

As previously noted, no Form AR-C has been filed in this matter. Typically, a Form AR-C is the means for filing a "formal claim." See Yearwood v. Wal-Mart Stores, Inc., 2003 AWCC 113, Claim No. F201311 (Full Commission Opinion filed June 17, 2003). See also Sinclair v. Magnolia Hospital, 1998 AWCC 409, Claim No. E703502 (Full Commission Opinion filed December 22, 1998) (a claim is "typically" filed via a Form AR-C).

I acknowledge, however, that other means exist to file a claim for Arkansas workers' compensation 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)

As previously noted, Claimant sent to the Commission a handwritten, undated letter requesting a hearing in this matter, which is sufficient to constitute a filing of a claim for initial benefits under the Downing decision.

As the moving party, Respondents under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012) must prove their entitlement to the relief requested-dismissal of these matters-by a preponderance of the evidence. This standard 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).

Here, the evidence shows that the parties were provided reasonable notice of the filing of the Motion to Dismiss and the hearing date. Moreover, Claimant has not made a *bona fide* request for a hearing or otherwise attempted to resolve his claim for workers' compensation benefits since his January of 13, 2022, handwritten objection to Respondents' Motion to Dismiss and request for a hearing. Rather, Claimant has filed his own motion for dismissal of his claim. As a result, the evidence preponderates that dismissal is warranted pursuant to Rule 13.

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As the claim is dismissed, Claimant’s counsel’s Motion to Withdraw has been rendered moot and is not discussed in this opinion.

ORDER

Pursuant to the findings of fact and conclusions of law set forth above, this claim is hereby respectfully dismissed under Arkansas Workers’ Compensation Commission Rule 099.13, without prejudice to the refiling of this claim within the limitation period specified by law.

Claimant’s counsel’s motion to withdraw has been rendered moot.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE