

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H005905

DERICK CONGER, EMPLOYEE	CLAIMANT
KERRS CABINETS & DOORS, INC., EMPLOYER	RESPONDENT
FIRSTCOMP INS. CO., CARRIER	RESPONDENT

OPINION FILED OCTOBER 21, 2021

Hearing before Chief Administrative Law Judge O. Milton Fine II on October 20, 2021, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Randy Murphy, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on a motion to dismiss filed by Respondents. A hearing on the motion was conducted on October 20, 2021, in Little Rock, Arkansas. Claimant, who is *pro se*, failed to appear. Respondents were represented at the hearing by Mr. Randy Murphy, Attorney at Law, of Little Rock, Arkansas. The record consists of the Commission's file, which has been incorporated herein in its entirety by reference.

The evidence reflects that per the First Report of Injury or Illness filed on August 21, 2020, Claimant purportedly injured his left thumb on August 11, 2020, while operating a table saw at work. According to the Form AR-2 that was filed on August 25, 2020, and the amended form filed on August 31, 2020,

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Respondents accepted the injury as compensable and paid medical and temporary total disability benefits pursuant thereto. No Form AR-C was ever filed.

On March 30, 2021, Respondents' counsel made his entry of appearance and filed a Joint Petition with the Commission on the matter. By email on April 1, 2021, Administrative Law Judge Katie Anderson (to whom this matter was originally assigned) informed the parties that she would grant the request of the parties that she consider the Joint Petition via interrogatories. However, because the parties failed to update her regarding the status of the proposed settlement, Judge Anderson on May 20, 2021, returned the file to the Commission's general files.

Respondents' counsel refiled the Joint Petition on July 9, 2021. Attached to the pleading was a medical exhibit. No interrogatories or other documents were proffered. A hearing on the Joint Petition was scheduled for August 13, at the Commission. However, Claimant failed to appear for the hearing.

On August 23, 2021, Respondents filed the instant Motion to Dismiss. Therein, they argued that dismissal was warranted under Ark. Code Ann. § 11-9-702 (Repl. 2012) and AWCC R. 099.13 because of Claimant's failure to pursue this matter, including appearing at the Joint Petition hearing. On August 24, 2021, Judge Anderson wrote Claimant, asking him to respond to the motion within twenty (20) days. The letter was sent to him by first-class and certified

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mail at the address for him listed in the file and on the Form AR-1. However, no response to the Motion to Dismiss was forthcoming. On September 14, 2021, a hearing on the motion was scheduled for October 20, 2021, at 9:30 a.m. at the Commission in Little Rock. The notice was sent to Claimant by first-class and certified mail. The first-class letter was not returned; however, the United States Postal Service could not confirm whether or not the certified letter had been claimed.

The hearing on the motion to dismiss proceeded as scheduled on October 20, 2021. Again, Claimant failed to appear. But Respondents appeared through counsel and argued for dismissal of the action under the aforementioned authorities.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 over this matter.
2. No Form AR-C has ever been filed in connection with his matter.
3. No other document before the Commission in this matter constitutes a claim for additional benefits under Ark. Code Ann. § 11-9-705(c) (Repl. 2012).

4. Respondents' motion to dismiss is denied because no claim exists to be subject to dismissal.

III. DISCUSSION

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 this matter—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).

As noted above, 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 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). While a Form AR-1 was filed in this case, that does not suffice to instigate a claim. *Id.* Under Ark. Code Ann. § 11-9-702(c) (Repl. 2012):

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.

The Arkansas Supreme Court in *Menser v. White Cty. Judge*, 2020 Ark. 140, 597 S.W.3d 640, held that the above-quoted provision means what it says: to constitute a claim for additional compensation, Claimant must make a filing with

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the Commission that “that specifically state[s] that it is a claim for additional compensation.”

My review of the Commission’s file discloses no document sufficient to constitute a filing of a claim for additional benefits under the above-cited standard. Because no claim has been filed, it follows that there is no claim subject to dismissal per Respondents’ motion. Thus, the Motion to Dismiss must be denied.

CONCLUSION

In accordance with the findings of fact and conclusions of law set forth above, the Motion to Dismiss is hereby denied.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge