

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G901563

LOGAN FLEMON, EMPLOYEE	CLAIMANT
CACHE VALLEY ELEC. CO., EMPLOYER	RESPONDENT
TRAVELERS INDEMN. CO., CARRIER	RESPONDENT

OPINION FILED MAY 26, 2022

Hearing before Chief Administrative Law Judge O. Milton Fine II on May 6, 2022, in Jonesboro, Craighead County, Arkansas.

Claimant *pro se*.

Respondents represented by Ms. Amy C. Markham, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on the Motion to Dismiss filed by Respondents. A hearing on the motion was conducted on May 6, 2022, in Jonesboro, Arkansas. Claimant was *pro se*. Respondents were represented at the hearing by Ms. Amy C. Markham, Attorney at Law, of Little Rock, Arkansas. Admitted into evidence was Respondents' Exhibit 1, a printout of an email thread dated August 12-13, 2021, consisting of one page. Without objection, the Commission's file has been incorporated herein in its entirety by reference.

The evidence reflects that per the First Report of Injury or Illness filed on March 8, 2019, Claimant purportedly injured his feet on February 27, 2019, when a track hoe ran over them while he was at work. According to the Form AR-2

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that was filed on June 19, 2019, Respondents accepted the injuries as compensable and paid medical and salary continuation benefits pursuant thereto. No Form AR-C was ever filed. A series of Forms AR-4 were filed with the Commission and rejected. One was finally accepted for filing on November 3, 2020.

On August 12, 2021, Carl Bayne, then-Director of Operations & Compliance for the Commission, responded to an email (per Claimant's testimony; the email cannot be located) from Claimant by writing:

Logan,

Just let us know that you feel that you need to return for additional treatment.

Claimant replied by email the same day:

Carl,

I'm needing additional treatment for my feet. It's [sic] feels like my feet are progressively getting worse.

In an email the next day, Bayne told a member of his staff:

Process this as a Form C asking for additional benefits.

Nothing further took place on this matter until February 22, 2022, when 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 requesting a hearing within the previous six months.

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On February 25, 2022, my office wrote Claimant, asking him to respond to the motion within twenty (20) days. The letter was sent to him by first-class and certified mail at the address for him listed in the file and on the Form AR-1. He signed for the certified letter on March 2, 2022; and the first-class letter was not returned. However, no response to the Motion to Dismiss was forthcoming.

On March 18, 2022, a hearing on the motion was scheduled for May 6, 2022, at 12:30 p.m. at the Craighead County Courthouse in Jonesboro. The notice was sent to Claimant by first-class and certified mail. The first-class letter was not returned; however, the certified letter was returned to the Commission unclaimed on April 18, 2022.

The hearing on the motion to dismiss proceeded as scheduled on May 6, 2022. Again, Claimant appeared *pro se*. 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. The August 12, 2021, email from Claimant to the Commission in this matter constitutes a claim for additional benefits under Ark. Code Ann. § 11-9-705(c) (Repl. 2012).
4. All parties received notice of the Motion to Dismiss and the hearing thereon pursuant to AWCC R. 099.13.
5. Respondents have not proven by a preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC R. 099.13.
6. Respondents have not proven by a preponderance of the evidence that dismissal of this claim is warranted under Ark. Code Ann. § 11-9-702(d) (Repl. 2012).
7. The Motion to Dismiss should be, and hereby is, denied without prejudice.
8. Claimant has requested a hearing on his claim.
9. This matter will proceed to a hearing on the merits.

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

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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 AR Wrk. Comp. LEXIS 739, Claim No. F201311 (Full Commission Opinion filed June 17, 2003). See also *Sinclair v. Magnolia Hospital*, 1998 AR Wrk. Comp. LEXIS 786, 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 the Commission that “that specifically state[s] that it is a claim for additional compensation.”

My review of the Commission’s file discloses one document sufficient to constitute a filing of a claim for additional benefits under the above-cited standard: the above-discussed August 12, 2021, email from Claimant to the

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Commission. Therein, Claimant specifically requested additional benefits in the form of “additional treatment” of the work-related injuries to his feet.

AWCC 099.13 provides:

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(d) (Repl. 2012) reads:

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 period specified in subsection (b) of this section.

(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).

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,

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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.*

At the hearing, Claimant testified that he received notice of the hearing. He added that he objects to the dismissal of his claim. His testimony was that after the last treatment he underwent that Respondents covered—which took place in February 2020—he contacted Respondent Travelers by email and regular mail in a quest for additional treatment. However, he received no response. Claimant requested a hearing on his 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 hearing on the Motion to Dismiss under Rule 13, Claimant has not yet abridged that rule. Moreover, I do not find that dismissal is warranted under § 11-9-702(d). The Motion to Dismiss is thus denied without prejudice. Prehearing questionnaires will be immediately issued to the parties, and this matter will proceed to a full hearing on the merits.

CONCLUSION

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

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IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge