

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H101998**

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| THURMAN FARRIS, EMPLOYEE | CLAIMANT |
| NICE PAK PRODUCTS, INC., EMPLOYER | RESPONDENT |
| HARTFORD UNDERWRITERS INS. CO., CARRIER | RESPONDENT |

OPINION FILED JULY 11, 2023

Hearing before Chief Administrative Law Judge O. Milton Fine II on July 7, 2023, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*.

Respondents represented by Mr. A. Gene Williams, Attorney at Law, Jonesboro, Arkansas.

I. BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing on the motion was conducted on July 7, 2023, in Jonesboro, Arkansas. No testimony was taken in the case. Claimant was *pro se*. Without objection, the Commission's file on the claim has been incorporated herein in its entirety by reference.

The record reveals the following procedural history:

Per the First Report of Injury or Illness filed February 24, 2021, Claimant purportedly suffered an injury to his upper torso on February 20, 2021, when he became pinned between two forklifts at work. According to the Form AR-2 filed

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on November 17, 2021, Respondents accepted the claim as a medical-only one and furnished benefits pursuant thereto.

Then-counsel Daniel Wren entered his appearance before the Commission on behalf of Claimant on March 11, 2021. No Form AR-C accompanied this filing, however. Respondents' counsel followed suit on June 3, 2021. On January 4, 2022, Wren moved to withdraw from his representation of Claimant. In an order entered on January 14, 2022, the Full Commission granted the motion under AWCC Advisory 2003-2.

Claimant sent a handwritten communication that was received by the Commission on July 1, 2022. It reads:

6-23-22

Hi:

My name is Thurman Farris.
I want you to open my case.

My number
870-317-3317

/s/ Thurman Farris
Thank you

The Legal Advisor Division—to whom the file was initially assigned—sent questionnaires to the parties. Both responded by agreeing to mediate. Respondents' counsel went further, writing on July 20, 2022: “We have no clue what Mr. Farris wants. He was released [from] medical care in September 2021 and we have heard nothing from him since.” At a July 28, 2022, legal advisor

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conference that had been scheduled, any outstanding issues were resolved. The file was returned to the Commission's general files that same day.

The record reflects that no further action took place on this claim until March 27, 2023, when Respondents filed the instant Motion to Dismiss. Therein, they argued that dismissal of the claim was warranted under AWCC R. 099.13, and alleged that Claimant had not prosecuted his claim for eight months. On March 28, 2023, my office wrote Claimant, asking for a response to the motion within 20 days. This certified letter was claimed on April 6, 2023, by someone with an illegible signature; and the first-class letter containing the same correspondence, likewise sent to the address supplied to the Commission by Claimant, was not returned. Nonetheless, no response from him was forthcoming. On May 15, 2023, a hearing on Respondents' motion was scheduled for July 7, 2023, at 10:30 a.m. at the Craighead County Courthouse in Jonesboro, Arkansas. The Notice of Hearing was sent to Claimant by certified and first-class mail to the same address as before. In this instance, Claimant signed for the certified letter on May 18, 2023. The first-class letter was never returned. Thus, the evidence preponderates that the notice reached its proper destination.

The hearing proceeded as scheduled on July 7, 2023. Claimant appeared at the hearing and testified, objecting to a dismissal. He asked that, in the event that this matter is not dismissed, a hearing be scheduled on his entitlement to additional benefits. Respondents, in turn, argued for dismissal under the Rule 13.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include documents and other matters properly before the Commission, the following findings of fact and conclusions of law are hereby made 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 this matter.
3. No other document before the Commission in this matter constitutes a claim for additional benefits under Ark. Code Ann. § 11-9-702(c) (Repl. 2012).
4. Respondents' Motion to Dismiss is denied because no claim exists to be subject to dismissal.

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)(discussing, *inter alia*, Rule 13).

Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), Respondents must prove by a preponderance of the evidence that this matter should be dismissed.

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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).

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, that does not suffice to instigate a claim. *Id.*

Per 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.

(Emphasis added) See *White Cty. Judge v. Menser*, 2020 Ark. 140, 597 S.W.3d 640.

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

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IV. 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