

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: H107220

MAGGIE HUEY, EMPLOYEE	CLAIMANT
HOUNDS LOUNGE, LLC, EMPLOYER	RESPONDENT
FIRSTCOMP INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
MARKEL SERVICE, INCORPORATED, THIRD PARTY ADMINISTRATOR(TPA)	RESPONDENT

OPINION FILED APRIL 11, 2024

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

The Claimant, pro se, appeared at the hearing.

The Respondents represented by the Honorable Randy P. Murphy, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

This matter comes before the Arkansas Workers' Compensation Commission per the Renewed Motion to Dismiss filed by the Respondents. A hearing on the motion was conducted before this Commission on January 31, 2024, in Little Rock, Arkansas. Thus, the sole issue for determination was whether this initial claim for workers' compensation benefits should be dismissed due to the Claimant's failure to prosecute it per the provisions provided under Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Commission Rule 099.13.

The record consists of the January 31, 2024, hearing transcript. Also, admitted into evidence was Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim,

consisting of five numbered pages. Furthermore, in order to adequately address this matter under Ark. Code Ann. § 11-9-705(a)(1) (Repl. 2012)(Commission must conduct the hearing . . . in a manner which best ascertains the rights of the parties”), and without objection, I have blue-backed to the record, a choice of forms, pleadings, and correspondence from the Commission’s file on the claim, consisting of twenty-one pages. Per *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, \_\_\_ S.W.3d \_\_\_, these documents have been served on the parties in conjunction with this opinion.

Reasonable notice of the dismissal hearing was had on all the parties in the manner set by law. Therefore, the hearing proceeded as scheduled on January 31, 2024. The Claimant, Ms. Maggie Huey, appeared at the hearing and was unrepresented. Also, the Respondents appeared through counsel and argued for dismissal of the claim because the Claimant failed to move this case to a hearing, and due her failure to comply with discovery, for example, her deposition, which was set for November 13, 2023, but she failed to appear.

**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. The parties were provided reasonable notice of the Renewed Motion to Dismiss and of the hearing thereon.
3. The evidence preponderates that Claimant has failed to timely pursue her claim due to unfortunate personal losses. However, the Claimant is now ready to pursue her claim.

4. The Respondents' Renewed Motion to Dismiss is hereby respectfully denied on this claim for initial workers' compensation benefits.

### **Background**

The record reflects the following procedural history:

The Claimant asserted her entitlement to Arkansas workers' compensation benefits due to an alleged workplace injury on February 27, 2021. But the Commission's file does not reflect the Claimant filed a formal claim via a Form AR-C in this case. That is the means for filing a "formal claim," a Form AR-C. While a Form AR-1 was filed in this case, that does not suffice to instigate a claim. I recognize, however, that other means exist to file a claim for initial benefits other than a Form AR-C.

In that regard, my review of the Commission's file shows a document sufficient to be able to constitute a filing of a claim for initial benefits under the factors cited above. That document is Claimant's September 16, 2022, hearing request. At that time, the Claimant wrote a lengthy letter to the Commission making a claim in this matter for her alleged entitlement to Arkansas workers' compensation benefits. Hence, this letter serves as a claim for initial benefits.

Therefore, on or about May 19, 2022, the Respondents filed a Form AR-2 with the Commission controverting liability for this claim. Specifically, the Respondents stated the grounds as thus: "Denying, as the accepted body part this claim is the sacrum/coccyx. There is no medical evidence that she sustained an injury to her sacrum/coccyx on February 27, 2021."

Although the Claimant notified her employer of her alleged accidental injury, as noted above, she did not file a formal claim with the Commission requesting benefits. Consequently, there was no request for a hearing made by the Claimant with respect to her alleged accidental injury.

Therefore, on August 29, 2022, the Respondents filed a Motion to Dismiss for Failure to Prosecute with the Commission. On September 16, 2022, the Claimant wrote a letter to the Commission objecting to the motion to dismiss her claim, and to request benefits.

It appears that a prehearing telephone conference was held with the parties on January 30, 2023. At that time, the Claimant requested additional time to retain legal counsel before moving forward on her claim. This request was granted, and the file was returned to the Commission's general files.

Subsequently, the Claimant requested a hearing on the claim. A prehearing telephone conference was scheduled for July 19, 2023. The Respondents' attorney appeared for the telephonic conference. However, I tried calling the Claimant several times, but she was unreachable. Therefore, I returned this claim to the Commission's general files. The Claimant sent an email to the Commission saying she had the time noted incorrectly on her calendar. As such, the Claimant requested that the prehearing telephone conference be rescheduled. This was done. The telephone conference was rescheduled for August 9, 2023. At the time of the telephone conference, the Respondents' attorney indicated that he wished to take the Claimant's deposition and possibly explore settlement of the claim. Therefore, the claim was returned to the Commission's general files.

On December 1, 2023, the Respondents filed a Renewed Motion to Dismiss, with the Commission accompanied by a certificate of service to the Claimant saying that they served a copy of the pleading on the Claimant by depositing a copy thereof with the United States Postal Service. The primary basis for the Respondents' renewed motion for dismissal of this claim is due to the Claimant's failure to appear for her deposition in November of 2023, and move forward with her claim.

Nevertheless, the Commission sent a letter to the Claimant informing her of the Respondents' renewed motion on December 4, 2023. The letter notice was sent via certified mail and first-class mail. Per this letter, the Claimant was given twenty (20) days from the date of that letter to file a response to the motion.

The letter-notice was mailed to the Claimant by first-class mail has not been returned to the Commission. On December 6, 2023, an agent for the post office left this notice with an individual at the Claimant's home. My review of the record proves that the Claimant signed for delivery of this document.

On January 4, 2024, the Commission mailed a Notice of Hearing to the Claimant stating that a dismissal hearing was scheduled for January 31, 2024, in Little Rock, Arkansas. The hearing notice mailed to the Claimant by certified mail was delivered by the mail carrier to the Claimant's home on January 8, 2024, and left with an individual. My review of the tracking document shows that the Claimant signed for the hearing notice. Of note, the notice of hearing sent to the Claimant via first-class has not been returned to the Commission.

Yet, there was no response from the Claimant.

Conversely, a hearing was in fact conducted on the Respondents' renewed motion to dismiss as scheduled. The Respondents' attorney asked that the claim be dismissed under Ark. Code Ann. §11-9-702 and Commission Rule 099.13 due to the Claimant's failure to prosecute her claim for workers' compensation benefits. Specifically, counsel noted that the Claimant did not appear at his office to have her deposition taken as arranged. However, the Claimant objected to her claim being dismissed. She attributed her failure to move forward with a resolution to her claim to fact that she has been dealing with a lot of loss. The Claimant indicated that she is willing

to have her deposition taken and work with counsel to possibly come to some type of resolution of her claim.

Given these circumstances, I find that the Respondents' most recent motion to dismiss this claim should be respectfully denied at this time.

**Conclusion**

Per the foregoing findings of fact and conclusions of law, the Respondents' Renewed Motion to Dismiss this claim is respectfully denied.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**Administrative Law Judge**