

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H108830

JAYLON N. JONES, EMPLOYEE

CLAIMANT

**SOUTHERN STRUCTURAL SOLUTIONS,
EMPLOYER**

RESPONDENT

**NATIONAL AMERICAN INS. CO./SEDGWICK
CLAIMS MANAGEMENT, CARRIER/TPA**

RESPONDENT

OPINION FILED SEPTEMBER 6, 2022

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

Claimant, Mr. Jaylon N. Jones, *pro se*, did not appear at the hearing.

Respondents were represented by Mr. Zachary F. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on September 1, 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 September 1, 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.

BACKGROUND

The evidence reflects that per the First Report of Injury or Illness filed on November 4, 2021, Claimant purportedly began experiencing wrist pain while digging a hole. According to the

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Form AR-2 (filed on November 5, 2021), Respondents controverted the claim in its entirety stating that the Claimant did not sustain a compensable work injury. The Claimant has never filed a Form AR-C.

The evidence also reflects that on November 9, 2021, the Claimant submitted a request for a hearing via e-mail communication to the Legal Advisors Division at the Commission. Claimant provided a response to the Legal Advisor Questionnaire, which was received by the Commission on December 16, 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 January 21, 2022. The Claimant failed to file a timely response; thus, on February 28, 2022, the claim was returned to the Commission's general files.

On March 3, 2022, the parties filed a Joint Petition for Settlement. A hearing on the Joint Petition was set for April 13, 2022; however, the hearing was cancelled on that same day at the request of the Claimant. The claim was subsequently returned to the Commission's general files.

Respondents filed a Motion to Dismiss for failure to prosecute on June 29, 2022. Also, on June 29, 2022, the Commission sent a Notice to Claimant advising him of Respondents' motion and a deadline for filing a written response. There was no response from the Claimant in this regard.

Pursuant to a Hearing Notice dated July 28, 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 September 1, 2022, at 11:00 a.m., at the Arkansas Workers' Compensation Commission, 324 Spring Street, Hearing Room A, Little Rock, Arkansas. The Hearing Notice was sent to all parties; Claimant's notice was sent via certified mail and regular mail. United States

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Postal Service records indicate that the certified letter was delivered on July 30, 2022, at 11:30 a.m., and a signature was obtained. There was no response from the Claimant.

Therefore, a hearing was in fact conducted as scheduled on Respondents' Motion to Dismiss. Respondents appeared through their attorney. The Claimant failed to appear.

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 was ever filed in connection with this matter.
3. Nonetheless, the Claimant's November 9, 2021, e-mail communication submitted to the Legal Advisors Division at the Commission requesting a hearing 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 failed to prosecute his claim under Commission Rule 099.13.
6. Respondents' Motion to Dismiss is hereby granted; the claim is hereby dismissed without prejudice under Commission Rule 099.13.

DISCUSSION

As previously noted, no Form AR-C was 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).

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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 e-mail communication dated November 9, 2021, to the Commission 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).

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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 failed to pursue his claim because he has taken no further action in pursuit of it since April 13, 2022, the date the Joint Petition hearing was cancelled at the request of the Claimant. As a result, the evidence preponderates that dismissal is warranted pursuant to Rule 13.

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.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE