

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H106798

BARBARA McGRAW, EMPLOYEE	CLAIMANT
LONOKE SCHOOL DIST., SELF-INSURED EMPLOYER	RESPONDENT
ARK. SCHOOL BOARDS ASSN., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED MARCH 14, 2022

Hearing before Chief Administrative Law Judge O. Milton Fine II on March 10, 2022, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Jarrod S. Parrish, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on the Motion to Dismiss that was filed by Respondents. A hearing on the motion was conducted on March 10, 2022, in Little Rock, Arkansas. Claimant, who is *pro se*, failed to appear. Respondents were represented at the hearing by Mr. Jarrod Parrish, Attorney at Law, of Little Rock, Arkansas. The record consists of Respondents' Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of two index pages and 17 numbered pages thereafter. In addition, the Commission's file has been incorporated herein in its entirety by reference.

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The evidence reflects that per the First Report of Injury or Illness filed on August 20, 2021, Claimant purportedly injured her left knee on August 19, 2021, when she fell at work when her knee gave out. According to the Form AR-2 that was filed on August 20, 2021, Respondents controverted the matter in its entirety. Claimant never filed a Form AR-C.

In a letter dated August 29, 2021, that was received by the Commission on September 2, 2021, Claimant requested a hearing. Claimant provided a response to the Legal Advisor Questionnaire on September 16, 2021. Respondents' counsel entered their appearance on September 23, 2021. Due to the failure of efforts to set up either a mediation conference or a legal advisor conference, the file was assigned to me on October 14, 2021. Prehearing questionnaires were issued to the parties on October 15, 2021. Respondents filed a timely response thereto on October 20, 2021. Claimant followed suit on November 12, 2021. At the January 3, 2022, prehearing telephone conference, the parties agreed that mediation was appropriate because the value of the claim is less than \$2,500.00. For that reason, I asked the Clerk of the Commission to reassign the claim to the Legal Advisor Division to conduct the mediation.

However, Claimant on January 24, 2022, wrote Respondents' co-counsel: "Please discontinue any further action on Claim No. H106798." In response to this communication, which was forwarded to the Commission, the file was returned to the Commission's general files on January 28, 2022, without the mediation taking place.

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On February 2, 2022, Respondents filed the instant Motion to Dismiss. Therein, they argued that dismissal was warranted under AWCC R. 099.13 because “Claimant has indicated she does not want to pursue her claim.” On February 8, 2022, a hearing on the motion was scheduled for March 10, 2022, at 9:30 a.m. at the Commission in Little Rock. The notice was sent to Claimant by first-class and certified mail at the address listed for her in the file. The certified letter was claimed on February 10, 2022, by “Ronald Gantt”; and the first-class letter was not returned. The evidence thus preponderates that Claimant received notice of the hearing.

The hearing on the Motion to Dismiss proceeded as scheduled on March 10, 2022. Again, Claimant failed to appear. But Respondents appeared through counsel and argued for dismissal of the action under the aforementioned authority.

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. Nonetheless, Claimant’s August 29, 2021, letter to the Commission constitutes a claim for initial benefits.

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4. The parties were provided reasonable notice of the Motion to Dismiss and of the hearing thereon.
5. The evidence preponderates that Claimant has failed to prosecute her claim under AWCC R. 099.13.
6. The Motion to Dismiss is hereby granted; the claim is hereby dismissed *without prejudice* under AWCC R. 099.13.

III. DISCUSSION

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.*

I recognize, however, that other means exist to file a claim for initial 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

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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)

My review of the Commission's file discloses one document sufficient to constitute a filing of a claim for initial benefits under the factors cited above. That document is her August 29, 2021, letter from Claimant to the Commission, which reads:

Workmans [sic] Comp. Commission

Dear Members:

Please be advised this is to ask for an appeal on myself:

Barbara McGraw
Lonoke School District
08-19-2021
146588 – file #

(Emphasis in original)

AWCC 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.

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See generally Johnson v. Triple T Foods, 55 Ark. App. 83, 85, 929 S.W.2d 730.

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 shown by the evidence recounted above, (1) the parties were provided reasonable notice of the Motion to Dismiss and of the hearing thereon; and (2) Claimant has failed to pursue her claim because she has taken no further action in pursuit of it (including appearing at the March 20, 2022, hearing to argue against its dismissal) since she participated in the January 3, 2022, prehearing telephone conference. Moreover, she has stated that she has no wish to pursue her claim any further. Thus, the evidence preponderates that dismissal is warranted under Rule 13.

That leaves the question of whether the dismissal of the claim should be with or without prejudice. The Commission possesses the authority to dismiss claims with prejudice. *Loosey v. Osmose Wood Preserving Co.*, 23 Ark. App. 137, 744 S.W.2d 402 (1988). In *Abo v. Kawneer Co.*, 2005 AR Wrk. Comp. LEXIS 510, Claim No. F404774 (Full Commission Opinion filed November 15, 2005), the Commission wrote: “In numerous past decisions, this Commission and the Appellate Courts have expressed a preference for dismissals *without*

prejudice.” (Emphasis added)(citing *Professional Adjustment Bureau v. Strong*, 75 Ark. 249, 629 S.W.2d 284 (1982)). Respondents at the hearing asked for a dismissal without prejudice. Based on the above authorities, I agree and find that the dismissal of this claim should be and hereby is entered *without prejudice*.¹

IV. CONCLUSION

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed *without prejudice*.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge

¹“A dismissal ‘without prejudice’ allows a new [claim] to be brought on the same cause of action.” BLACK’S LAW DICTIONARY 825 (abridged 5th ed. 1983).