

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NOS. H004886 & H202191**

LANA ROGERS, EMPLOYEE

CLAIMANT

**UNITED PARCEL SVC.,
EMPLOYER**

RESPONDENT

**LM INS. CORP.,
CARRIER**

RESPONDENT

OPINION FILED JANUARY 4, 2024

Hearing before Chief Administrative Law Judge O. Milton Fine II on December 13, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant¹, *pro se*.

Respondents represented by Mr. David C. Jones, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on Respondents' Motion to Dismiss. A hearing on the motion was conducted on December 13, 2023, in Little Rock, Arkansas. Claimant, who is *pro se*, appeared in person and testified. Respondents were represented at the hearing by Mr. David C. Jones, Attorney at Law, of Little Rock, Arkansas. In addition to Claimant's testimony, the record consists of the following exhibits, which were admitted without objection: Commission's Exhibit 1—correspondence and notice to this claim—consisting of three numbered pages; and Respondents' Exhibit 1—forms, pleadings, and correspondence related to this claim—consisting of 83 numbered pages.

¹Claimant is a hearing-impaired individual. The proceedings were interpreted to her by Mr. John West, who is a certified sign language interpreter.

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The evidence reflects that per the First Report of Injury or Illness filed on July 21, 2020, Claimant purportedly injured her head at work on June 12, 2020, when a package fell and struck her. This matter was assigned the number H004886 by the Operations and Compliance Division of the Commission. According to the Form AR-2 that was filed on August 13, 2020, Respondents accepted the claim as a medical-only one. However, in an amended form filed on September 17, 2020, they informed they Commission that they were now paying indemnity benefits as well. On December 28, 2020, Claimant through then-counsel Laura Beth York filed a Form AR-C, alleging that she was entitled to the full range of initial and additional benefits for her alleged “injuries to her head, neck, back, left arm, left hand and other whole body.” Thereafter, on April 17, 2021, York moved to withdraw from her representation of Claimant. In an order entered on April 30, 2021, the Full Commission granted the motion pursuant to AWCC Advisory 2003-2.

Respondents on May 16, 2022, filed a Motion to Dismiss and brief in support thereof regarding AWCC No. H004886. In response to the motion, Claimant wrote the Commission, requesting a change of physician. Because of this, Administrative Law Judge Chandra Black, to whom the file had been assigned, notified the parties by letter on June 10, 2022, that she was holding the matter “in abeyance until such time a hearing is requested.”

On March 16, 2022, Respondents filed a First Report of Injury or Illness that reflected that Claimant purportedly hurt her head at work on March 8, 2022,

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when a falling package struck her. The Operations and Compliance Division assigned this matter the number H202191. In a Form AR-2 filed by them on March 22, 2022, Respondents represented that they were accepting the claim as a medical-only one.

Discovery proceeded on both matters. Claimant was sent a records release pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”); but instead of merely signing it, Claimant added language indicating that she was reserving certain rights under the Uniform Commercial Code. She did this repeatedly. Because of this, Respondents were unable to use it. In the meantime, Claimant was granted her one-time change of physician on both AWCC Nos. H004886 and H202191 to Dr. David Sokolow on February 28, 2023. An amended order was issued on March 7, 2023; and a third was issued on March 17, 2023. A review of the correspondence in evidence shows that the parties were involved in an ongoing dispute not only over Claimant’s need to provide an unrestricted HIPAA release, but her insistence that she be furnished an in-person sign language interpreter for her medical appointments.

On October 17, 2023, Respondents filed the instant Motion to Dismiss and a Brief in Support thereof. Therein, they argued that dismissal of both AWCC Nos. H004886 and H202191 was warranted under both Ark. Code Ann. § 11-9-702 (Repl. 2012) as well as AWCC R. 099.13 because “[n]o hearing has been requested in regard to either claim, and no further action has been taken by the Claimant in over six (6) months with respect to these claims.” Judge Black wrote

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Claimant on October 20, 2023, requesting a response to the motion within 20 days. Claimant did so in a letter received by the Commission on November 2, 2023, that reads:

To Whom It May Be [sic] Concern:

This is Lana Rogers, AWCC File No. H004886 and H202191, I would like to send you a letter as you requested,

I do Object to the Motion for dismissal, I do have an issue that I would like to Pursue. I did not request a Motion to Dismiss. That's [Respondents' counsel's] decision after several times requesting me to sign a Hippa [sic] for and I've signed it and submitted it to him as he requested, but my signature wasn't good enough for him.

On November 14, 2023, Judge Black scheduled a hearing on the motion for December 13, 2023. At the hearing, Claimant testified that she received the Notice of Hearing and that that was why she appeared at the hearing.

During the hearing, Respondents argued for dismissal under both § 11-9-704(d) (Repl. 2012) and Rule 13.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of Claimant, 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 AWCC Nos. H004886 and H202191.

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2. All parties received notice of the Motion to Dismiss and the hearing thereon pursuant to AWCC R. 099.13.
3. Respondents have not proven by a preponderance of the evidence that Claimant has failed to prosecute AWCC No. H004886 under AWCC R. 099.13.
4. Respondents have not proven by a preponderance of the evidence that AWCC No. H004886 should be dismissed under Ark. Code Ann. § 11-9-702(d) (Repl. 2012).
5. Respondents' Motion to Dismiss should be, and hereby is, denied regarding AWCC No. H004886.
6. No Form AR-C has ever been filed in connection with AWCC No. H202191.
7. No other document before the Commission in AWCC No. H202191 constitutes a claim for additional benefits.
8. Respondents' Motion to Dismiss is denied regarding AWCC No. H202191 because no claim exists to be subject to dismissal.
9. Claimant has requested a hearing on AWCC Nos. H004886 and H202191.
10. AWCC Nos. H004886 and H202191 will proceed to a hearing on the merits.

III. DISCUSSION

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 periods 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, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence

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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 agreed to sign the HIPAA authorization form without any reservation language—and she did so. She testified that she objects to the dismissal of AWCC Nos. H004886 and H202191 and wants a hearing on her entitlement to additional benefits under both matters.

Concerning AWCC No. H004886, after consideration of the evidence, I find that while both Claimant and Respondents were given reasonable notice of the Motion to Dismiss hearing under Rule 13, she has not yet abridged that rule. By the same token, I find that while § 11-9-702(d) provides that a claim “may” (clearly intending that the administrative law judge has discretion in the matter) be dismissed for failure to request a hearing within six months of the filing of the claim, dismissal is not yet warranted here. The Motion to Dismiss is thus denied regarding AWCC No. H004886.

No Form AR-C has been filed in AWCC No. H202191. 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

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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 evidence 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 regarding AWCC No. H202191 for this reason.

But based on Claimant’s hearing request regarding both AWCC Nos. H004886 and H202191, prehearing questionnaires will be immediately issued to the parties, and these matters will proceed to a full hearing on the merits.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents’ Motion to Dismiss is hereby respectfully denied.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge