

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H206170**

AMANDA K. ROWLETT, EMPLOYEE	CLAIMANT
LINEN KING LLC, EMPLOYER	RESPONDENT
TRAVELERS PROP. & CASUALTY CO. OF AMER., CARRIER	RESPONDENT

OPINION FILED JULY 27, 2023

Hearing before Administrative Law Judge O. Milton Fine II on July 27, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, 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 27, 2023, in Little Rock, Arkansas. No testimony was taken in the case. Claimant, who according to Commission records is *pro se*, failed to appear at the hearing. Without objection, the Commission file on this claim has been incorporated herein in its entirety by reference. Admitted into evidence was Respondents' Exhibit 1, correspondence related to the claim, consisting of five pages.

ROWLETT – H206170

The record reflects the following procedural history:

On August 26, 2022, a Form AR-1 was filed in this case, reflecting that Claimant purportedly sustained an injury to her neck on August 13, 2022, when she was involved in a work-related motor vehicle accident. Respondents on August 26, 2022, filed a Form AR-2, representing that they had accepted the injury as compensable and were paying medical and indemnity benefits pursuant thereto. Claimant has not filed a Form AR-C. Respondents' counsel entered his appearance on September 27, 2022.

On May 15, 2023, Respondents filed the instant Motion to Dismiss. Therein, they argued that "Claimant has done nothing to pursue this matter," thus warranting dismissal. The file was assigned to me on May 15, 2023; and on May 30, 2023, my office wrote Claimant, asking for a response to the motion within twenty (20) days. The letter was sent via certified and first-class mail to the address for Claimant listed in the file. While the certified letter was returned to the Commission, unclaimed, on June 22, 2023, the first-class correspondence was not returned. Nonetheless, no response to the motion was forthcoming from Claimant.

On June 27, 2023, a hearing on the Motion to Dismiss was scheduled for July 27, 2023, 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 same address as before. As before, the certified letter was not claimed by Claimant, and it was returned to the

ROWLETT – H206170

Commission on July 17, 2023. But again; 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 July 27, 2023. As stated above, Claimant failed to appear. But Respondents appeared through counsel and argued for dismissal of the action under AWCC R. 099.13.

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 this matter.
3. No other document before the Commission in this matter constitutes a claim for additional benefits.
4. Respondents' Motion to Dismiss is denied because no claim exists to be subject to dismissal.

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.

ROWLETT – H206170

See generally *Johnson v. Triple T Foods*, 55 Ark. App. 83, 85, 929 S.W.2d 730 (1996). (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).

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.

ROWLETT – H206170

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.

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