

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NOS. H208734, H300195 & H300472**

**MISTY D. SANDERS, EMPLOYEE** **CLAIMANT**

**PULASKI CO. SHERIFF'S OFFICE,  
EMPLOYER** **RESPONDENT**

**ASSOC. OF ARK. COUNTIES RISK  
MGMT. SVCS., THIRD-PARTY  
ADMINISTRATOR** **RESPONDENT**

**OPINION FILED SEPTEMBER 22, 2022**

Hearing before Chief Administrative Law Judge O. Milton Fine II on August 24, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant *pro se*.

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 filed by Respondents. A hearing on the motion was conducted on August 24, 2023, in Little Rock, Arkansas. Claimant was *pro se*. Respondents were represented at the hearing by Mr. Jarrod S. Parrish, Attorney at Law, of Little Rock, Arkansas. Admitted into evidence were the following: Respondents' Exhibit 1, forms and correspondence related to Claim No. H208734, consisting of one index page and seven numbered pages thereafter; Respondents' Exhibit 2, forms and correspondence related to Claim No. H300195, consisting of one index page and seven numbered pages thereafter; and Respondents' Exhibit 3, forms and correspondence related to Claim No. H300472, consisting of two index pages

SANDERS – H208734, H300195 & H300472

and twelve numbered pages thereafter. Without objection, the Commission's file has been incorporated herein in its entirety by reference.

H208734 The evidence reflects that per the First Report of Injury or Illness filed on December 15, 2022, Claimant purportedly injured her right Achilles tendon on or around March 1, 2021, as a result of repeated running to respond to work-related emergencies. According to the Form AR-2 that was filed that same day, Respondents denied the claim. No Form AR-C was ever filed.

H300195 According to the First Report of Injury or Illness filed on January 13, 2023, Claimant hurt her right Achilles tendon on October 14, 2022, when “[r]esponding to emergency codes called to ensure safety of staff members.” In this instance, per the Form AR-2 filed that same day, Respondents accepted the claim as a medical-only one. In a Form AR-C filed on January 10, 2023, Claimant requested temporary partial disability benefits, rehabilitation, and payment of medical expenses for a right ankle injury. She also sought on January 10, 2023, a one-time change of physician. This was granted on January 24, 2023, and changed her authorized treating physician from Dr. Eric Gordon to Dr. Jesse Burks.

H300472. With respect to this particular claim, the evidence shows that, per the First Report of Injury or Illness filed on December 15, 2022, Claimant injured her right Achilles tendon on March 2, 2021, by repetitive running to respond to emergency codes. The Form AR-2 that was likewise filed on January

SANDERS – H208734, H300195 & H300472

24, 2023, Respondents denied the claim. Claimant did not file a Form AR-C in connection with this particular file. But on January 26, 2023, she wrote the Commission in regard to it: “I, Misty D. Sanders am requesting a Hearing in reference to my Workers’ Compensation claim stated above.” When efforts to schedule a legal advisor or mediation conference failed, the file was assigned to me on March 13, 2023. On March 23, 2023, prehearing questionnaires were issued to the parties. Respondents filed a timely response thereto on April 11, 2023. But because Claimant failed to respond, the file was returned to the Commission’s general files on April 28, 2023.

Nothing further took place on these three files until May 16, 2023, when Respondents filed the instant Motion to Dismiss. Therein, they argued that dismissal of all three claims was warranted under Ark. Code Ann. § 11-9-702 (Repl. 2012) and AWCC R. 099.13 because of Claimant’s failure to pursue them, including requesting a hearing thereon within the previous six months. The Clerk of the Commission reassigned the files to me on May 31, 2023; and on June 15, 2023, my office wrote Claimant, asking her to respond to the motion within twenty (20) days. The letter was sent to her by first-class and certified mail at the address for her listed in the files and on the Form AR-C. She signed for the certified letter on June 20, 2023; and the first-class letter was not returned. Claimant testified that she prepared and emailed a response to my office. My

SANDERS – H208734, H300195 & H300472

review of the three files reveals that on July 5, 2023, she emailed my former assistant, Natalie Craig (and copying Respondents' co-counsel Melissa Wood):

Dear Mrs. [sic] Natalie Craig and whom it may concern,

My name is Misty Sanders. I am writing in response to paperwork received from your office. I will first state how confused I am with everything going on in my case. I received double correspondence from your office and a law firm stating to complete and return, in which I did. Several weeks later I received more correspondence stating paperwork was never received and their office is filing for [d]ismissal. I do have documentation. I feel that AWCC is and have been been delibrately [sic] misinforming me on whether [sic] or not I needed legal representation, but at this point I'm almost certain I do. Upon my second injury it was determined by my surgeon, and seconded by the AWCC doctor that my injuries (first and second) were work related, something I never suspected. I was unaware that I needed legal representation, because doing the right thing does not require it and I could not afford it. So, I followed all orders given to me. I was never compensated for missed time off for the injury that to [sic] Pulaski County took full responsibility for, because documentation was received on the wrong foot, never requesting correct foot knowing that it was two of the same injuries on file.

**However, I am requesting a [h]earing in writing to you via this email, because someone should hear my story.** If any questions or concerns please contact me at 501-960-2543 or via email[.]

(Emphasis added)

On July 11, 2023, a hearing on the motion was scheduled for August 24, 2023, at 9:30 a.m. at the Commission in Little Rock. The notice thereof was sent to Claimant by first-class and certified mail using the same address as before. In this instance, both the first-class and certified letters were returned, undelivered, to the Commission on July 17 and 25, 2023, respectively. Regardless, Claimant

SANDERS – H208734, H300195 & H300472

testified that she received notice of the hearing via email—illustrated by her appearance there.

The hearing on the Motion to Dismiss proceeded as scheduled on August 24, 2023. Again, Claimant appeared *pro se* and testified. Respondents appeared through counsel and argued for dismissal of the three files under the aforementioned authorities.

## **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 AWCC Nos. H208734 and H300472. While nothing constitutes a claim for initial benefits concerning H208734, Claimant's January 26, 2023, hearing request regarding H300472 suffices to constitute a claim for initial benefits.
3. All parties received notice of the Motion to Dismiss and the hearing thereon pursuant to AWCC R. 099.13.

SANDERS – H208734, H300195 & H300472

4. Because nothing in the file constitutes an initial claim for benefits regarding H208734, there is no claim to dismiss; the Motion to Dismiss is hereby denied regarding this particular file.
5. Respondents have not proven by a preponderance of the evidence that Claimant has failed to prosecute H300195 and H300472 under AWCC R. 099.13.
6. Respondents have not proven by a preponderance of the evidence that dismissals of H300472 and H300195 are warranted under Ark. Code Ann. § 11-9-702(a)(4) & (d) (Repl. 2012), respectively.
7. The Motion to Dismiss should be, and hereby is, denied without prejudice.
8. Claimant has requested a hearing on her claims.
9. This matter will proceed to a hearing on the merits.

### **III. DISCUSSION**

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).

SANDERS – H208734, H300195 & H300472

As noted above, no Form AR-C has been filed in connection with H208734 and H300472. 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 Forms AR-1 were filed, they do 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 Wrk. 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.

SANDERS – H208734, H300195 & H300472

(Citations omitted)

My review of the Commission's file discloses no document sufficient to constitute a filing of a claim for initial benefits under the factors cited above regarding H208734. Because there is no claim, it follows that there is nothing to dismiss. The Motion to Dismiss is thus denied vis-à-vis H208734.

As for H300472, I find that Claimant's January 26, 2023, hearing request addressed to the Commission suffices to constitute a claim for initial benefits under the above standard.

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(a)(4) & (d) (Repl. 2012) read:

(4) If within six (6) months after the filing of a claim for compensation no bona fide request for a hearing has been made with respect to the claim, the claim **may**, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation period specified in subdivisions (a)(1)-(3) of this section.

...

(d) 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



SANDERS – H208734, H300195 & H300472

of the claim within limitation period 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 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 initially testified that despite my review of H300472 indicating otherwise, she prepared a prehearing questionnaire response and faxed it to my office. However, further questioning revealed that at best, she sent it only to the office of Respondents’ counsel; and even then, what she sent the firm may not have been a response to the questionnaire my office

SANDERS – H208734, H300195 & H300472

mailed her. Claimant could not confirm whether or not she received the April 28, 2023, letter from my office informing her that H300472 was being returned to the Commission's general files because of her failure to file a questionnaire response. The file does not reflect any follow-up by her in response to the communication. Her testimony readily reflects that she became confused regarding the identities of the various actors in these matters: the Commission, Respondents, and Respondents' counsel.

Throughout the proceeding, she stated that she became confused not only by the legal intricacies involved, but by there being three separate files opened with respect to her alleged injuries. She further explained that she only has two injuries: one with an alleged injury date of April 11, 2022, and involving her left Achilles tendon, and the other with an alleged injury date of October 14, 2022, and involving her right Achilles tendon. My review of the three files discloses that the April 11, 2022, date corresponds to H300472, while October 14, 2022, corresponds to H300195. In her testimony, relating back to her confusion over the process, Claimant stated that with respect to her hearing request on H300195, it was her belief that she was asking for a hearing on both injuries; i.e., she wanted a hearing on both H300195 and H300472.

Claimant objected to a dismissal, and requested a hearing on both H300195 and H300472, in the event that they are not dismissed.

SANDERS – H208734, H300195 & H300472

After consideration of the evidence, I find that while both Claimant and Respondents were given reasonable notice of the hearing on the Motion to Dismiss under Rule 13, Claimant has not yet abridged that rule. Moreover, I do not find that dismissal is warranted under § 11-9-702(a)(4) or (d). The Motion to Dismiss is thus denied without prejudice with regard to H300472 and H300195, respectively. Prehearing questionnaires<sup>1</sup> will be immediately issued to the parties, and these claims will proceed to a full hearing on the merits.

**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.**

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O. MILTON FINE II  
Chief Administrative Law Judge

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<sup>1</sup>Out of an abundance of caution, one will be sent out on H208734 as well.