

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F710086

MAY A. WRIGHT, EMPLOYEE

CLAIMANT

**DOLGENCORP, INC.,
SELF-INSURED EMPLOYER**

RESPONDENT NO. 1

**DOLLAR GENERAL CORPORATION,
THIRD PARTY ADMINISTRATOR,**

RESPONDENT NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

OPINION FILED MAY 15, 2008

Hearing before Administrative Law Judge O. Milton Fine II on May 6, 2008 in Batesville, Independence County, Arkansas.

Claimant, *pro se*, did not appear.

Respondents represented by Ms. Betty Hardy, 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 May 6, 2008, in Batesville, Arkansas. The Claimant, who is *pro se*, did not appear. Respondents were represented at the hearing by Ms. Betty Hardy, Attorney at Law, of Little Rock, Arkansas. No testimony was taken in the case. The record consists of blue-backed documents from the Commission's file that detail the history of the matter.

On September 25, 2001, a Form AR-1 was filed, reflecting that Claimant was alleging a repetitive motion injury to her left wrist and elbow as of May 28, 2008. Respondents on September 27, 2007 filed a Form AR-2, indicating their intent to controvert this on the ground that Claimant's condition is not causally related to her

employment. While nothing in the Commission's file indicates that Respondents have paid Claimant any benefits associated with this, I note that their motion to dismiss is grounded in part in Ark. Code Ann. § 11-9-702(d), which pertains to claims for additional benefits. Claimant on October 16, 2007 wrote Respondents' counsel a letter that stated, "I am not pursuing [sic] my claim for Workers compensation."

On February 27, 2008, Respondents filed the instant motion to dismiss pursuant to § 11-9-702(d) and AWCC R. 099.13. I sent Claimant a letter by certified mail on February 29, 2008, giving her 15 days to respond to the motion. While Claimant signed for the letter on March 1, 2008, she did not file a response. The notice of the May 6 hearing was sent to the parties on March 20, 2008. Claimant signed for the certified mail on March 28, 2008.

The Commission's file does not reflect that Claimant ever filed a Form AR-C in this matter. Nor has she requested a hearing.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include documents and other matters properly before the Commission, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. A Form AR-C has never been filed in connection with his 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

Arkansas Code Annotated § 11-9-702(d) (Repl. 2002) provides:

(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 of the claim within the limitation period specified in subsection (b) of this section.

In addition, AWCC R. 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.

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

As stated 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 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). 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 additional benefits other than a Form AR-C. In *Downing v. Univ. of Ark.*, 1999 AWCC 75, 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)

My review of the Commission's file discloses no document sufficient to constitute a filing of a claim for additional benefits under the factors 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 is hereby denied.

IT IS SO ORDERED.

O. MILTON FINE II
Administrative Law Judge