

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F608613

GLADYS YOUNG, EMPLOYEE	CLAIMANT
WALGREEN COMPANY, EMPLOYER	RESPONDENT
ZURICH AMERICAN INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED MAY 28, 2008

Hearing before Administrative Law Judge O. Milton Fine II on May 16, 2008 in Mountain Home, Baxter County, Arkansas.

Claimant, *pro se*.

Respondents represented by Mr. Michael Stiles, 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 16, 2008 in Mountain Home, Arkansas. The Claimant appeared *pro se*. Respondents were represented at the hearing by Mr. Michael Stiles, Attorney at Law, of Little Rock, Arkansas. Claimant testified at the hearing. The documentary record consists of documents from the Commission's file, hereinafter discussed, which without objection from the parties I have blue-backed to the record. Claimant testified.

My review of the record reflects the following:

Claimant's date of injury was April 12, 2006, according to the Form AR-1 filed August 7, 2007. "Allegedly [Claimant] was reaching for medication on the top shelf. She stepped back and twisted awkwardly and began to feel pain in her groin area. She is now complaining of swelling and soreness in that area." As shown by the

Form AR-2 filed August 9, 2006, Respondents accepted the injury as compensable. Indemnity benefits were paid. The record does not reflect that Claimant ever filed a Form AR-C; but on November 10, 2006, she sent a letter to the Commission requesting a hearing on her claim. The parties indicated a willingness to mediate. Respondents represented to the Commission that they paid all benefits in connection with the groin, but that Claimant was claiming a back injury that also allegedly occurred on June 12, 2006, and that they were controverting this. At the February 27, 2007 mediation conference, Claimant represented that she was not making a claim for her back, but that her doctor wanted her to obtain an MRI of her back to rule out disc disease. Claimant stated that she did not want the MRI, but merely to continue treatment for her groin. Respondents agreed to arrange for her to see Dr. Barry Baskin. The record does not reflect whether Claimant saw Baskin. But on August 3, 2007, she again wrote the Commission to request a hearing. In this instance, an attempt to set up a mediation conference failed, so the file was assigned to me to proceed to a hearing. Prehearing questionnaires were issued to the parties on September 7, 2007. Because Claimant's response was not forthcoming, on October 1, 2007, I wrote her that if I did not receive the response within ten days, her file would be returned to the Commission's general files. She signed for the certified letter on October 2, 2007. She still did not respond, so on October 12, 2007, her file was returned to general files.

On February 14, 2008, Respondents filed a motion to dismiss the claim pursuant to Ark. Code Ann. § 11-9-702(d) (Repl. 2002) and AWCC R. 099.13. On February 13, 2008, I wrote Claimant that she had 15 days to respond. While she

signed for the letter on February 22, 2008, she filed no response. The notice of the hearing was sent to the parties by certified and first-class mail on March 10, 2008. Both parties signed for this on March 11, 2008.

At the hearing, Respondents asserted that Claimant has not responded to interrogatories that were propounded to her on January 24, 2007, and that she has failed to advance her claim.

Under questioning from me, Claimant stated that while she responded to one set of questions from Respondents' counsel, "after that I just got tired of filling out these papers because I wasn't getting anywhere anyway, so I just decided not to bother." Counsel denied sending more than one set of interrogatories, and denied receiving any discovery response from her. When shown the prehearing questionnaire from my office, Claimant admitted receiving it, but stated that "I, at that time, at that time, I just got tired of dealing with everything. It was just, to me, a big hassle, and I would have rather just, you know, ended it all." She identified the copies of the certified letter receipts from my file, identified herein, as bearing her signature. Claimant also stated that she was present at the hearing because she received the hearing notice. When asked what her wishes are with respect to her claim, she testified: "I just want it closed and end it . . . I want it over with."

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:

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.

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)(discussing these provisions).

Neither the evidence offered by the parties, nor my review of the Commission file, indicates that a 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. While Claimant on two occasions wrote the Commission to request a hearing, there

is no mention, either directly or impliedly, that she has sustained a compensable injury.

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