

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F701350

BRUCE LOWERY, EMPLOYEE	CLAIMANT
A & N ELECTRIC, EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, INC., CARRIER	RESPONDENT

OPINION FILED DECEMBER 4, 2007

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant is pro se.

Respondent represented by the HONORABLE ANDREW IVEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals the Administrative Law Judge's September 19, 2007, Pre-Hearing Order, arguing that the Administrative Law Judge erroneously allowed the respondents to conduct discovery, notably over the claimant's objections. Specifically, the claimant seeks to ban the respondents from conducting discovery on the basis that they did not timely respond to a Pre-Hearing Questionnaire. Based upon a review of the Pre-Hearing Order and the claimant's appeal, we find that a Pre-Hearing Order is not appealable. Therefore, the claimant's appeal is denied.

The respondent's deadline for submitting the Administrative Law Judge's Pre-Hearing Questionnaire was September 3, 2007. The respondents did not timely submit the Pre-Hearing Questionnaire, due to their failure to attain counsel in a timely manner. At the September 18, 2007 Pre-Hearing Conference, the claimant properly objected to the respondent's discovery requests, as the respondent's Pre-Hearing Questionnaire was filed after the deadline. The Administrative Law Judge overruled the claimant's objection, finding:

If the respondents had ignored the prehearing notice, it is my policy to ban the respondents from calling witnesses and presenting evidence at the hearing on the merits. In this case, the respondents' prehearing questionnaire was received prior to the telephone conference and the prehearing questionnaire specifically allows the parties to gather additional evidence...)

The prehearing conference serves as a tool to get the parties ready for a hearing and see if the issues can be narrowed down or resolved, and to determine if additional information is needed. Discovery deadlines are discretionary with the Administrative Law Judges. Statutorily, the parties have until 7 days before the hearing on the merits to submit exhibits pursuant to Ark. Code Ann. §11-9-705(c). However, waiting to the last minute to file exhibits may result in requests for continuances or

expenses (court reporter's fees, attorney's fees, witness fees, etc). The prehearing conference helps to avoid this problem.

Accordingly, the claimant's objection is overruled and the respondents will be allowed to conduct discovery prior to any hearing on the merits.

The claimant appealed to the Full Commission the Administrative Law Judge's September 19, 2007, Pre-Hearing Order, specifically stating in his appeal that the respondent's request for discovery should be denied for failure to meet the Administrative Law Judge's deadline.

The Arkansas Court of Appeals has conclusively held that "in order for this court to review a decision from the Workers' Compensation Commission, the order from which the parties appeal must be final." Erwin v. Riverside Furniture Corp., 97 Ark. App. 42, \_\_\_ S.W.3d \_\_\_ (2006). To be final, an order must dismiss the parties from the court, discharge them from the action, or conclude their rights as to the subject matter in controversy. Id.; TEC v. Faulkner, 38 Ark. App. 13, 827 S.W.2d 661 (1992). Ordinarily, an order of the Commission is reviewable only at the point that it awards or denies compensation. Interlocutory decisions and decisions on incidental matters are not reviewable

for lack of finality. TEC, supra. Furthermore, it has been determined by the Full Commission that a Pre-Hearing Order is not a final, appealable order. Barbosa v. Curt Bean Lumber Company, Full Commission Opinion filed September 3, 2003 (F004211).

In the present matter, although it is noted that the claimant properly objected to the Administrative Law Judge's ruling, the Order was only a Pre-Hearing Order and therefore, not appealable. However, the time for the claimant to object to discovery being admitted into evidence should be at a hearing on the merits of the case. As such, the claimant's appeal is not ripe and, therefore, should be denied.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

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PHILIP A. HOOD, Commissioner