

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F611271

RICKY ELAM, EMPLOYEE	CLAIMANT
ARKADY DISASTER RECOVERY, INC., EMPLOYER	RESPONDENT
COMMERCE AND INDUSTRY, CARRIER	RESPONDENT

ORDER FILED FEBRUARY 9, 2009

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

Claimant is not represented by counsel but appears *pro se*.

Respondent represented by HONORABLE FRANK B. NEWELL,
Attorney at Law, Little Rock, Arkansas.

ORDER

Presently before the Commission is respondents' Motion to Strike Notice of Appeal by the claimant. After consideration of respondents' motion, claimant's lack of response thereto and all other matters properly before the Commission, we find that respondents' motion must be and hereby is granted.

The Administrative Law Judge issued an opinion on November 13, 2008. As the claimant was *pro se*, the Administrative Law Judge provided claimant with a notice which stated in bold letters across the top: **"THE FOLLOWING IS IMPORTANT, PLEASE COMPLY APPEALS AND CROSS-APPEALS TO THE"**

FULL COMMISSION." Not only do these instructions set forth the time line within which to file a notice of appeal, but they also specifically state:

Appealing and cross-appealing parties shall file Notices of Appeal and Cross-appeal with the Commission in duplicate, sending a copy to all other parties. All notices shall bear Certificates of Service. Notices shall set out the style of the case and the grounds for the appeal or cross-appeal.

Clearly, the claimant was properly advised as to the procedures for filing a notice of appeal. He was placed on notice that all notices of appeal shall be sent to the other party and bear a Certificate of Services. It has long been held that pro se claimants should be held to the same standard and must adhere to the same rules as the respondents. "Pro se appellants receive no special consideration of their argument and are held to the same standard as licensed attorneys," Elder v. Ford & Assoc., ___ Ark. App. ___, ___ S.W.3d ___ (October 29, 2008); Pro se litigants are held to the same requirements as attorneys. Thomson v. Zufari, 325 Ark. 208, 924 S.W.2d 796 (1996), Collins v. St. Vincent Doctors, ___ Ark. App. ___, ___ S.W.3d.

___ (March 7, 2007); Meachum v. Cross County School Dist., Full Commission Opinion filed April 12, 2006 (AWCC NO. F501662, F501663, F501072); Wynn v. Fairfield Communities, Inc., Full Commission Opinion filed October 31, 2005 (AWCC No. F010134). The Commissions rules and procedures in claims must be applied equally to each and every party. Accordingly, the claimant must be held to the same standard and same requirements as any attorney filing a notice of appeal with the Commission.

Commission Rule 099.18 specifically provides that "All briefs, letters, and other papers or documents shall be served upon all other known parties, and shall bear an appropriate certificate of service." The issue is whether claimant complied with the notice requirement, not whether respondents have or will be prejudiced by the claimant's failure. In the present claim, despite having been properly advised, the claimant failed to follow the proper procedures for filing a Notice of Appeal with the Commission. Therefore, we find that claimant has failed to perfect his notice of appeal, and that the notice of appeal must therefore, be, and hereby is stricken.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion regarding this motion. The majority finds that the claimant did not meet the requirements for notifying the opposing party under Commission Rule 099.18 (II) (A), and therefore the notice of appeal should be dismissed. I disagree and would deny the respondent's Motion to Strike Notice of Appeal.

The Administrative Law Judge filed the opinion denying the claimant benefits on November 13, 2008. The claimant timely appealed the opinion on December 12, 2008, making December 27, 2008 the deadline for a cross appeal.

The applicable statute is Ark. Code Ann. § 11-9-711(a)(2), which states:

Any other party to the dispute may cross appeal by filing a written petition for cross appeal within fifteen (15) days after the notice of appeal is filed in the office of the Workers' Compensation Commission, except that in no event shall a cross appellant have less than thirty (30) days from the receipt by him or her of the order or award within which to file a notice of cross appeal. [emphasis added]

The procedural requirements set forth in the statute are mandatory or jurisdictional and require strict compliance. See Ark. Code Ann. § 11-9-704(c)(3); Lloyd v. Potlatch Corporation, 19 Ark. App. 335, 721 S.W.2d 670 (1986); Cooper Industrial Products v. Meadows, 5 Ark. App. 205, 634 S.W.2d 400 (1982); Amlease, Inc. v. Kuligowski, 59 Ark. App. 261, 957 S.W.2d 715 (1997). Strict construction is a narrow construction, requiring that nothing be taken as intended that is not clearly expressed and that the plain meaning of the language be employed. Clayton Kidd Logging Co. v. McGee, 77 Ark. App. 226, 72 S.W.3d 557 (2002).

Here, the respondent has not proffered any belated cross appeal or stated that it would be making a cross appeal. Nevertheless, the majority grants a motion to strike the claimant's entire appeal because the respondent was allegedly not given 15 days in which to file a cross-appeal. The respondent argues it was prejudiced by the lack of notice because the filing of an appeal begins the statutory time limit for any potential cross appeal they may have, though the respondent never alleges such a cross-appeal was or would ever be filed.

In support, the respondent cites Commission Rule 099.18 (II) (A) which states, in part: "All briefs, letters, and other papers or documents shall be served upon all other known parties, and shall bear an appropriate certificate of service." Here, the respondent alleges that the claimant did not serve the respondent's counsel with the notice of appeal. I find that the Arkansas General Assembly's authority, in the form of Ark. Code Ann. § 11-9-711(a) (2), will supercede Commission Rule 099.18(II) (A). Commission Rule 099.18(II) (A) does not specify sanctions for failure to serve an opposing party. Furthermore, dismissal of the

entire claim is simply too severe a penalty, especially considering the respondent has never alleged it had a cross-appeal which was precluded. A far less prejudicial outcome would be to grant the respondent an additional 15 days, as required in Ark. Code Ann. § 11-9-711(a)(2), in which to file their cross-appeal, should one actually exist. The majority simply cannot say the respondent was prejudiced at all, yet with this dismissal of the claimant's notice of appeal, the prejudice to the claimant is immense. To base such a prejudicial decision on a hypothetical, not fact, is deplorable.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner