

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F005195

DOROTHY JOHNSON, EMPLOYEE	CLAIMANT
WACKENHUT CORPORATION, EMPLOYER	RESPONDENT
AMERICAN HOME ASSURANCE CO., INSURANCE CARRIER	RESPONDENT

OPINION FILED MAY 1, 2009

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

Claimant appears Pro Se.

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

OPINION AND ORDER

The respondents in the above-styled matter have filed a  
Motion To Strike Notice Of Appeal And To Dismiss Appeal Of  
Claimant To Full Commission.

In an opinion filed February 26, 2009, an  
administrative law judge found that the claimant failed to  
prove she was entitled to additional benefits. The claimant  
filed a timely notice of appeal to the Full Commission.  
However, the claimant did not serve a copy of the notice of  
appeal to counsel for the respondents. Commission Rule  
099.18 (II) (A) states 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. Since the claimant has not complied with the express requirement of Rule 099.18 (II) (A), the Full Commission grants the respondents' motion to strike the claimant's notice of appeal.

The Full Commission therefore dismisses the claimant's appeal of the administrative law judge's opinion.

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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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.

The applicable statute is Ark. Code Ann. § 11-9-711(a) (1), which states:

A compensation order or award of an administrative law judge or a single commissioner shall become final unless a party to the dispute shall, within thirty (30) days from the receipt by him or her of the order or award, petition in writing for a review by the full commission of the order or award.

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, there is no dispute regarding the fact that the claimant timely petitioned in writing for a review by the Full Commission. Therefore, the claimant has complied with Ark. Code Ann. §11-9-711(a) (1).

Despite the fact that the claimant has complied with the applicable statute, the majority cites Commission Rule 099.18 (II) (A) as basis for dismissal. Commission Rule 099.18 (II) (A) 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.

The majority has erred. Commission Rule 099.18(II) (A) cannot supercede Ark. Code Ann. § 11-9-711 (a) (1). The claimant has complied with Ark. Code Ann. § 11-9-711 (a) (1). Ark. Code Ann. § 11-9-711 contains no provision for dismissal for failure to serve an opposing party. Furthermore, Commission Rule 099.18(II) (A) also does not contain a provision for dismissal for failure to serve an opposing party. As such, the majority has overstepped its authority. While the Commission may instruct the claimant to comply with Rule 099.18(II) (A), strict construction of Ark. Code Ann. § 11-9-711 does not allow the Commission to dismiss the claimant's appeal.

For the aforementioned reasons, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner