

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F507174 & F601092

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| PATRICK T. ONUIGBO, EMPLOYEE | CLAIMANT |
| FAMILY DOLLAR SERVICES, INC., EMPLOYER | RESPONDENT |
| ACE AMERICAN INSURANCE COMPANY, INSURANCE CARRIER | RESPONDENT |

OPINION FILED MAY 12, 2009

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

Claimant appears Pro Se.

Respondent represented by the HONORABLE MARK A. PEOPLES,
Attorney at Law, Little Rock, Arkansas.

ORDER

This case comes before the Full Commission on
Claimant's Motion to Hold Appeal in Abeyance.

Claimant's brief was due to be filed on February 27,
2009 but filed this motion on April 8, 2009. Respondent has
not filed a response to this motion.

Therefore, after considering claimant's motion, no
response by Respondent and all other matters properly before
the Full Commission, we hereby grant claimant's Motion to

Hold Appeal in Abeyance for thirty (30) days from this date. If claimant fails to file a brief during the thirty (30) days, the claim shall be submitted to the Full Commission on the existing briefs.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority ordering that this claim be held in abeyance for 30 days. After a hearing held on September 29, 2008, the Administrative Law Judge issued an opinion on November 7, 2008, finding that the claimant sustained a compensable physical and mental injury for which he is entitled to additional medical benefits. However, the Administrative Law Judge further found that the claimant failed to prove entitlement to additional temporary total disability benefits. The issue of permanent benefits was reserved. Claimant, through his attorney, filed a timely notice of appeal and at the same time filed a motion to dismiss his

attorney. Respondents filed a timely notice of cross-appeal. Claimant wrote the Commission asking that the motion to dismiss his attorney not be acted upon until after the first of the year as he was going to be out of town. The Commission, having received no further correspondence from the claimant, issued an order January 26, 2009, dismissing claimant's attorney from representation. On January 29, 2009, the clerk of the commission mailed a briefing schedule to the parties advising both claimant and respondents of the date on which their respective appeal briefs were due and advised that the case would be submitted to the Full Commission on April 8, 2009. This correspondence also specifically states:

Any extension request must be submitted in writing prior to the due date. Extension requests must be agreed to by all parties and good cause must be shown. **When good cause is shown, either party may receive (1) extension. Second requests must be filed by formal motion for the Full Commission's consideration. Please note that second requests will only be granted under the most compelling circumstances.**

Claimant's brief to the Full Commission was due on February 27, 2009. Claimant did not file a timely brief with the Full Commission, nor did he contact the Commission seeking an extension because he needed additional time to

find a new attorney. Respondents filed a timely brief with the Full Commission on March 13, 2009. It was not until after the respondents filed their brief on appeal that the claimant finally contacted the Commission in a letter dated March 26, 2009, stating that the respondents' brief was full of lies. Claimant submitted a second letter to the Commission dated April 8, 2009, which the clerk of the Commission has treated as a motion to hold in abeyance. In this April 8, 2009, correspondence, claimant states that he fully intends to pursue his appeal, but he needs time to secure an attorney. Based upon this request, the majority has granted the claimant 30 days to hold this claim in abeyance and insinuates that the claimant may file, and that we will accept, a brief from the claimant if he files one within this 30 day period.

The claimant was clearly advised in the briefing letter from the clerk of the commission that any request for a continuance had to be filed prior to the date said brief is due. The claimant did not file a timely request for a continuance. We have consistently held that when a party's motion for an extension was untimely filed, it must be denied. This standard has been applied uniformly to claimants, respondents, represented parties, and pro se

litigants. See, Hickey v. Gardisser Constr., Full Commission Opinion filed January 13, 2009 (F609988 & F612976); Henderson v. Cooper Tire & Rubber Co., Full Commission Opinion filed October 31, 2007 (F303334); Hancock v. Staffmark, Full Commission Opinion filed March 19, 2006 (F403429); McGraw v. Arkansas Delivery Systems, Full Commission Opinion March 31, 1999 (Claim No. E315884); Strecker v. Holiday Island Suburban Improvement District, Full Commission Opinion, March 11, 1995 (Claim No. E704665); Zarnes v. Camden Wire, Full Commission Opinion, February 24, 1999 (Claim No. E714141).

Accordingly, as the claimant never filed a proper request for an extension of time to file his brief, holding his claim in abeyance does not benefit the claimant at this time. Even if the claimant secures counsel, any request to file a brief would be untimely and must be denied. Therefore, I find that the claimant's motion to hold the claim in abeyance must be denied. However, the claimant's appeal is not dead merely because he failed to file a brief. The Full Commission conducts a de novo review of the retire record on each and every appeal. Briefs filed by the parties's are merely the parties argument on appeal and are not evidence. Failure to file a brief is not detrimental to

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an appeal. Therefore, for all the reasons set forth herein,
I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner