

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F900244

WYLIE W. WESTBROOK, EMPLOYEE	CLAIMANT
TETON INDUSTRIAL CONSTRUCTION, EMPLOYER	RESPONDENT
NATIONAL UNION FIRE INS. C/O AIG DOMESTIC CLAIMS, INC., INSURANCE CARRIER	RESPONDENT

ORDER FILED FEBRUARY 26, 2010

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

Claimant appears Pro Se.

Respondent represented by the HONORABLE JARROD S. PARRISH,
Attorney at Law, Little Rock, Arkansas.

ORDER

Comes on for consideration by the Full Commission the
Respondent's Motion to Dismiss Appeal filed February 2,
2010. From the motion, the response of the claimant filed
on February 16, 2010 and other matters of law and fact known
or made known to the Full Commission, the Full Commission
does find as follows:

1. Administrative Law Judge's Opinion was filed in
this matter on December 14, 2009.

2. The Clerk of the Commission received a handwritten note from the claimant on January 12, 2010 indicating he plans to appeal the administrative law judge's decision.
3. The claimant did not provide the respondents with a copy of the Notice of Appeal, nor were they provided any other contemporaneous written or verbal notice of the claimant's intent to appeal the matter further.

Therefore, in accordance with Arkansas Workers' Compensation Commission Rule 099.18 the respondent's motion to dismiss is proper and should be and hereby is granted.

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.

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.

PHILIP A. HOOD, Commissioner