

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA09-1322

MITCHELL G. SAPP

APPELLANT

Opinion Delivered June 23, 2010

V.

TYSON FOODS, INC.

APPELLEE

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F401810]

REVERSED AND REMANDED

JOHN MAUZY PITTMAN, Judge

This is an appeal from the dismissal for failure to prosecute appellant's workers' compensation claim that had been pending for several years against appellee. Appellant argues that he was engaged in settlement negotiations and that the delay was caused by appellee. It is impossible for us to determine the merits of this question because the record is incomplete, and we remand for the Arkansas Workers' Compensation Commission to settle the record.

The Commission's decision was largely based on appellant's supposed failure to bring up an adequate record for appeal. It is, however, the Commission's duty to prepare the record, and appellant asserts that he was never served with the list of exhibits that were to be included or excluded from the record—exhibits that, he asserts, would have supported his claims. The Commission held that the defective record was appellant's fault because he "approved of the procedure" to be used in compiling the record. However, procedure is one

thing and content another; the Administrative Law Judge in this case assured the parties that he would compile an inclusive record and err on the side of caution. Here, where appellant was not served with a copy of the transcript prior to the submission of the case to the Commission for decision, it offends elementary principles of fair play to hold appellant responsible for the omissions of the Commission's employee.

Appellant, who had no part in compiling or preparing the record, filed a motion for clarification with the Commission seeking to have additional materials included in the record. Under these circumstances, we hold that the Commission erred in denying that motion. We direct the Commission to allow appellant to designate the additional materials that he requested for inclusion in the record, and for further consistent proceedings that may be necessary in light of those additions.

Reversed and remanded.

HART and BAKER, JJ., agree.