

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H204423

JAMES C. JONES, JR.,
EMPLOYEE

CLAIMANT

UG2, LLC,
EMPLOYER

RESPONDENT

TRAVELERS INDEMNITY COMPANY,
THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED MAY 9, 2023

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant, pro se, failed to appear for the hearing.

Respondents represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held on April 26, 2023 in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702 (d) (Repl. 2012), and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was attempted on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the April 26, 2023, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated herein by reference. The Respondents' Hearing Exhibit consisting of twenty-one numbered pages has been marked Respondents' Exhibit 1.

Discussion

On July 7, 2022, the Claimant wrote a letter to the Commission, to request a hearing on his claim. At that point, this matter was assigned to Former Administrative Law Judge Terry Don Lucy, who forwarded the preliminary documents to the parties. The Claimant completed the prehearing documents and returned them to the Commission on August 23, 2022. Specifically, the Claimant alleged that he sustained an injury to his left foot while moving heavy pallets. According to the Claimant, one of the pallets fell on his left foot and broke it. The Claimant stated that his reason for requesting a hearing was because he wished to obtain eight months of back pay for the time missed from work. The Claimant's alleged injury occurred on June 13, 2021.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on June 27, 2022 stating that this was a medical only claim. However, the carrier also indicated on this form that they were controverting the claim on the grounds of: "No medical evidence of an injury."

Pursuant to the Claimant's request for a hearing on July 7, 2022, this claim was scheduled for prehearing telephone conference on September 28, 2022. Former Administrative Law Judge Terry Don Lucy conducted this telephone conference. At the time of the telephone conference, the Claimant advised to "just forget about it," with respect to his claim and shortly thereafter terminated his participation in the conference call. As a result, this claim was returned to the Commission's general files on September 28.

Since this time, the Claimant has taken no action whatsoever to prosecute his claim for benefits.

Subsequently, on or about February 6, 2023, the Respondents filed with the Commission a request to dismiss this claim due to a lack of prosecution. Respondents forwarded a copy of this request for dismissal to the Claimant via the United States Postal Service.

The Commission sent a notice of the Respondents' motion to the Claimant last known address on February 7, 2023. Per this correspondence, the Claimant was given a deadline of February 21, 2023 for filing a written response to the Respondents' motion.

Yet, there was no response from the Claimant.

Therefore, pursuant to a Hearing Notice dated February 23, 2023, the Commission notified the parties that a hearing was scheduled to address the Respondents' motion to dismiss this claim due to a lack of prosecution. Said hearing was scheduled for April 26, 2023, at 9:30 a.m., at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas.

However, on the day of the hearing, the United States Postal Service returned the Claimant's notice to the Commission essentially marked, "undeliverable."

A hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant failed to appear at the hearing. However, the Respondents appeared through their attorney.

Counsel essentially noted that the Claimant has failed to timely prosecute his claim for workers' compensation benefits. Counsel also noted that there has been no attempt on the part of the Claimant to resolve his claim since the telephone conference of September 28, 2022, at which time the Claimant indicated that he wished not to pursue his claim. Therefore, counsel moved that this claim be dismissed for a lack of prosecution and the fact that the Claimant has indicated that he does not wish to pursue it.

The record before me shows that a request for a hearing has not been filed by or on behalf of the Claimant since the time of the prehearing telephone of September 28, 2022. Hence, since the filing of his claim for benefits more than six months ago, the Claimant has failed to prosecute his claim. Of significance, the Claimant failed to appear at the dismissal hearing, and he has not

objected to his claim being dismissed or responded to the notices of this Commission. More importantly, the Claimant has indicated that he does not wish to pursue his claim.

Hence, the preponderance of the evidence shows that the Claimant has abandoned his claim for workers' compensation benefits, considering he has not objected to his claim being dismissed or made a bona fide request for a hearing since the filing of the claim. More, the Claimant has indicated that he is not interested in pursuing his claim.

Therefore, the evidence before me demonstrates that the dismissal of this claim is warranted, without prejudice, to the refile of it within the limitation period specified by law. I further find that said dismissal should be and is hereby made pursuant to the provisions of Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the basis of the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On July 7, 2022, the Claimant requested a hearing on his claim. Since the filing of his claim more than six months ago, the Claimant has failed to prosecute his claim and has not made a bona fide request for a hearing. However, since this time, the Claimant has indicated that he does not wish to pursue his claim.
3. On February 6, 2023, the Respondents filed with the Commission a motion to dismiss this claim for a lack of prosecution, primarily on the basis that the Claimant has indicated that he does not wish to pursue his claim.
4. A hearing was held on the Respondents' motion to dismiss, but the Claimant failed to appear at the hearing, and he has not objected to his claim being dismissed or responded to the notices of this Commission.
5. The evidence preponderates that the Claimant has failed to prosecute this claim under the provisions of Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13.

6. Appropriate Notice of the dismissal hearing was attempted on all parties to their last known address, in the manner prescribed by law.
7. The Respondents' motion to dismiss is hereby granted without prejudice pursuant to Ark. Code Ann. §11-9-702, and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed pursuant to Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13, without prejudice to the refiling of it within the limitation period as specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge