

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G708352

JOY ALFAKIH, EMPLOYEE	CLAIMANT
SAF HOLLAND USA, INC., EMPLOYER	RESPONDENT NO. 1
TRUMBULL INSURANCE COMPANY/ THE HARTFORD, INSURANCE CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JUNE 21, 2022

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Helena, Phillips County, Arkansas.

Claimant, Ms. Joy Alfakih, *pro se*, appeared at the hearing.

Respondents No. 1 were represented by Mr. Rick Behring, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 was represented by Mr. David L. Pake, Attorney at Law, Little Rock, Arkansas. Mr. Pake waived his appearance at the hearing.

STATEMENT OF THE CASE

A hearing was held on March 30, 2022, 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, and Arkansas Workers' Compensation Commission Rule 099.13.

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

The record consists of the transcript of the March 30, 2022, 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. Respondents No. 1's exhibit packet consisted of seventeen (17) pages of forms and communication, including the following: the Form AR-C; the

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Form AR-2; a January 8, 2021, letter from the Commission to the parties returning the claim to the Commission's general files; a December 30, 2020, letter from the Claimant to the Commission requesting that her case be closed based on a death in her family; Respondents No. 1's renewed Motion to Dismiss and Brief filed on February 10, 2022; the Commission's February 11, 2022, correspondence to the Claimant regarding Respondents' Motion to Dismiss; and the March 7, 2022, Hearing Notice. The exhibit was labeled as Respondents No. 1's Exhibit No. 1 and was admitted into evidence.

DISCUSSION

On October 20, 2017, Claimant sustained an admittedly compensable injury to her left shoulder while working for Respondent-Employer. Claimant's attorney of record at that time filed a Form AR-C with the Commission on November 29, 2017. In the Form AR-C, the cause of injury and the part of her body injured, was described as: "During the course and scope of her employment, she suffered injuries to her left shoulder and left hand." Per the Form AR-C, the Claimant asserted her entitlement to both initial and additional workers' compensation benefits.

Respondent-Carrier filed a Form AR-2 with the Commission on November 30, 2017. Respondent-Carrier accepted this claim as compensable. As a result, Respondent-Carrier paid medical benefits for Claimant's work-related injuries of October 20, 2017.

Claimant subsequently requested that her attorney be relieved as counsel of record. Consistent with that request, the Full Commission issued an Order relieving Claimant's attorney as counsel of record on July 26, 2018. Since that time, Claimant has appeared *pro se* in the matter.

On May 7, 2019, Respondents No. 1 filed a Motion to Dismiss due to Claimant's failure to prosecute her claim and her failure to respond to discovery. Subsequently, on May 15, 2019,

Claimant filed with the Commission a letter requesting a hearing in the matter. In light of Claimant's request, Respondents No. 1's Motion to Dismiss for lack of prosecution was denied.

In June of 2019, with the consent of all parties, the case was re-assigned to the Legal Advisors Division for a voluntary mediation conference. However, on July 1, 2019, once the attempt to set up a mediation conference failed, Claimant filed with the Commission a letter requesting a hearing. In July of 2019, some discovery was exchanged; however, in September of 2019, the case was returned to the Commission's general files. Since that time, there was no action taken by Claimant to prosecute her claim, and therefore, on August 16, 2020, Respondents No. 1 filed a second Motion to Dismiss and Brief in Support with the Commission. The Claimant filed a written objection. Claimant appeared at the hearing and again objected to Respondents No. 1's motion. After a hearing on the Motion to Dismiss, an Opinion was rendered by the Commission on December 18, 2020, denying Respondents No. 1's Motion to Dismiss.

On December 30, 2020, rather than providing her prehearing pleadings, Claimant sent a handwritten letter informing the Commission that she wanted to close her case. Accordingly, the claim was returned to the Commission's general files on January 8, 2021. There was no subsequent action taken by the Claimant to pursue her claim.

Thus, on February 10, 2022, Respondents No. 1 filed a third Motion to Dismiss and Brief in Support with the Commission. On February 11, 2022, the Commission sent a Notice to the Claimant, via certified mail and regular mail, advising her of Respondents No. 1's motion and a deadline for filing a written response. There was no response from the Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated March 7, 2022, the Commission advised the parties that the matter had been set for a hearing on Respondents No. 1's Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for March 30, 2022, at 12:30 p.m., at the Phillips County Justice Complex, Judge Wilson's Courtroom, 1804 Martin Luther King Dr., Helena, Arkansas. The Hearing Notice was sent via First-Class Mail and Certified Mail to Claimant's address. United States postal records indicate that the certified mail was returned "Unclaimed." The regular mail was not returned. There was no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents No. 1's Motion to Dismiss for Failure to Prosecute. Respondents No. 1 appeared through their attorney. Claimant appeared at the hearing and objected to the motion.

Respondents' counsel advised that the Claimant had a history of not pursuing her claim in this matter, despite being given several opportunities to do so. He noted that it had been almost five (5) years from the date of Claimant's injury; it had been three years since Claimant had been released by Dr. Ahmadi; and this was the third dismissal hearing in the matter. Counsel emphasized that there had been no real action in the claim. Therefore, he requested that the claim be dismissed pursuant to Rule 13 with or without prejudice, and alternatively, as no *bona fide* request for a hearing has been made, he requested that the claim also be dismissed pursuant to Ark. Code Ann. § 11-9-702(a)(4) or 702(d).

The Claimant testified that on October 20, 2017, she suffered permanent nerve damage to her left arm (her dominant arm) after a compensable work injury. Although she testified that the nerve damage impacted her daily activities, she admitted that she had not sought any additional medical treatment since October of 2020 and that she took only Tylenol or other over-the-counter

medications as needed. As for why Claimant had not pursued her workers' compensation claim since the last dismissal hearing on October 29, 2020, Claimant testified she had not received any information from the Commission that required a response; however, Claimant admitted that she has had several recent address changes. Despite her failure to notify the Commission of her address changes, she testified that she received notice of the dismissal hearing because her sister forwarded the notice to her. Claimant also stated that she would soon have another new address as she was in the process of moving back to southeast Arkansas (from Mississippi). She had recently accepted a job offer as a correctional officer for the Arkansas Department of Correction, Cummins Unit. In preparation for the job, she was currently a cadet in the Academy (she was in uniform at the hearing) and would be returning as a correctional officer once she completed her training.¹

When asked specifically about Claimant's December 30, 2020, handwritten letter to the Commission wherein she indicated that she wanted to close her workers' compensation claim, she testified that at the time she wrote the letter, she was grieving the sudden death of her twenty-nine-year-old son from a drug overdose and was unable to focus on her workers' compensation claim at the time. At the time of the hearing, she testified that she was ready to make any effort to obtain an attorney and pursue her claim.

In light of the Claimant's appearance at the hearing and objection to the claim being dismissed, and her explanation of her grief after the recent, tragic loss of her son, I find that the Respondents No. 1's Motion to Dismiss is not warranted at this time. Therefore, after full

¹ Claimant was advised during the hearing that she was responsible for notifying the Commission of her current contact information.

consideration of the facts, issues, and the law, I hereby find the Respondents No. 1's Motion to Dismiss should be and is hereby respectfully denied.

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 October 20, 2017, Claimant sustained an admittedly compensable injury to her left shoulder while working for the Respondent-Employer.
3. On November 29, 2017, Claimant's attorney of record at the time, filed a Form AR-C with the Commission for initial and additional workers' compensation benefits in this matter.
4. Subsequently, on November 30, 2017, Respondent-Carrier filed a Form AR-2 with the Commission, wherein Respondent-Carrier accepted the claim as compensable and paid medical benefits to and on behalf of Claimant for her work-related injuries of October 20, 2017.
5. On May 7, 2019, Respondents No. 1 filed a Motion to Dismiss due to Claimant's failure to prosecute her claim and her failure to respond to discovery. The motion was denied in light of Claimant's objection to the motion.
6. In September of 2019, the case was returned to the Commission's general files. Thereafter, there was no action taken by Claimant to prosecute her claim.
7. On August 16, 2020, Respondents filed a second Motion to Dismiss and Brief in Support with the Commission, due to a lack of prosecution. Claimant objected to the motion for dismissal of her workers' compensation claim.
8. After a hearing on the motion, the Commission entered an Opinion on December 18, 2020, denying the motion.

9. On December 30, 2020, Claimant submitted a handwritten letter asking that her workers' compensation case be closed. Thus, the claim was returned to the Commission's general files.
10. On February 10, 2022, Respondents No. 1 filed a Renewed Motion to Dismiss and Incorporated Brief in Support.
11. Claimant appeared at the hearing, objected to the dismissal of her workers' compensation claim, and explained that at the time she wrote the letter asking that her claim be closed, she was grieving the tragic death of her son. At the hearing, she stated that she was ready to pursue her claim.
12. Respondents No. 1's Motion for Dismissal for want of prosecution should be, and is respectfully, denied.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Respondents No. 1's Motion for Dismissal of this claim for workers' compensation benefits, arising out of Claimant's October 20, 2017, injury, is denied.

The Claimant is hereby put on notice that failure to prosecute her claim could result in the claim being dismissed. The Claimant has had several opportunities to move forward with her claim. The prehearing process in this matter will begin immediately after this Order is entered.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE