

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H004975

VINCENT BELIN,
EMPLOYEE

CLAIMANT

AP BURCH, JR. LOGGING,
EMPLOYER

RESPONDENT

PRAETORIAN INSURANCE COMPANY/ SEDGWICK
CLAIMS MANAGEMENT SERVICES, INC.,
INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR
(TPA)

RESPONDENT

OPINION FILED JUNE 13, 2022

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, in Little Rock, Pulaski County, Arkansas.

Claimant, pro se, appearing.

Respondents represented by the HONORABLE AMELIA C. BOTTEICHER, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for want of prosecution, on June 8, 2022, in this claim for workers' compensation benefits pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Specifically, the sole issue for determination was whether this claim should be dismissed due to the Claimant's failure to prosecute it under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was tried on all the parties in the manner prescribed by law.

The record consists of the hearing transcript from June 8, 2022. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

Procedural Background

The Claimant's former attorney filed a Form AR-C with the Commission in the above-styled claim on August 17, 2020. Per this document, the Claimant alleged he sustained an injury while working for the respondent-employer on July 22, 2020. Specifically, the described cause of the Claimant's injury and the part of body being injured, reads in relevant part: "Claimant was in course and scop[sic] of employment when someone using a loader swung a log and hit Claimant in the side. The Claimant sustained injuries to his low back, left leg, left hip, lungs and other whole body." Counsel checked all the boxes for both initial and additional workers' compensation benefits.

On July 28, 2020, the Respondents filed a Form AR-2 with the Commission controverting this claim. Specially, the claims adjuster wrote, "This claim has been denied in its entirety. Claimant had a positive post-accident drug test."

A Prehearing Telephone Conference was held on March 3, 2021 in this matter. At that time, a Full Hearing was scheduled for May 5, 2021 in El Dorado, Arkansas at the Union County Courthouse.

However, on April 21, 2021, the Respondents' attorney requested a continuance of the hearing due to good cause being demonstrated. Therefore, on April 22, 2021, I granted the Respondents' request for a continuance and cancelled the Full Hearing. At that time, the claim was returned to the Commission general files.

Subsequently, there was no action taken by the Claimant to prosecute his claim for workers' compensation benefits. Therefore, on July 28, 2021, the Respondents filed a Motion to Dismiss for Failure to Prosecute.

Therefore, on July 30, 2021, I sent a letter to the Claimant and his attorney, informing them of the motion, with a deadline for filing a written objection.

The Claimant's attorney sent an e-mail to the Commission on July 31, 2021 objecting to the motion to dismiss, and essentially requested a hearing on the merits. As a result, the motion to dismiss was held in abeyance and the prehearing process was started. On September 15, 2021 the matter was scheduled for another Full Hearing. The hearing was scheduled for Wednesday, December 1, 2021 in El Dorado, Arkansas.

It appears that the Claimant's attorney requested that the Full Hearing be cancelled, which was done on November 17, 2021. At that time, the claim was returned to the Clerk of the Commission for assignment of it to general files, which was done.

This case was presented to the Full Commission pursuant to a motion filed by the Claimant's attorney to withdraw as counsel of record in this matter. On December 29, 2021 the Full Commission granted the motion relieving the Claimant's attorney as counsel of record for him in this matter.

The Respondents filed another Motion to Dismiss for Failure to Prosecute with the Commission on February 1, 2022. Therefore, on February 4, 2022 I notified the Claimant of the Respondents' motion and gave him a deadline of February 25, 2022 to file an objection to the his claim being dismissed.

On February 28, 2022, this matter was scheduled for a dismissal hearing, which was to be held on April 13, 2022 at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas.

The Claimant sent a letter to the Commission on March 1, 2022, objecting to the dismissal of the claim. On April 11, 2022, the dismissal hearing was cancelled, and the prehearing process was started once again. However, the Claimant failed to file a timely response to the Prehearing Questionnaire. As a result, the matter was scheduled for a hearing on the Respondents' Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for June 8, 2022 at the Commission, in Little Rock.

Said hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. The Claimant appeared at the hearing to object to his claim being dismissed. The Respondents appeared through their attorney. Counsel moved that the claim be dismissed due to the Claimant's failure to prosecute his claim for workers' compensation benefits. However, the Claimant explained that he had been dealing with the illness of his mother; and ultimately in December 2021 she passed away. The Claimant indicated that he is now ready to pursue his claim.

Here, the evidence proves that Claimant has failed to timely prosecute his claim. However, the Claimant has shown good cause for his failure to diligently pursue his workers' compensation claim.

Therefore, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motion to dismiss this claim should be respectfully denied at this time. Following this action, the prehearing process will be started again in this matter. Claimant is aware that his failure to prosecute his claim could result in it being dismissed.

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 August 17, 2020 the Claimant's former attorney filed a claim for workers' compensation benefits alleging an injury date of July 22, 2020.
3. Since that time, the Claimant has failed to prosecute his claim.
4. The Respondents have filed a motion to dismiss this claim.
5. The Claimant has presented evidence showing good cause for his failure to timely prosecute this claim.
6. Therefore, I find that Respondents' motion to dismiss this claim for workers' compensation benefits should be and is hereby respectfully denied at this time. However, the Claimant has been cautioned that failure to prosecute his claim could result in it being dismissed.

ORDER

Based upon the foregoing findings, I am compelled to respectfully deny the Respondents' motion for the dismissal of this claim, arising out of the Claimant's alleged accidental injury of July 22, 2020.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge