

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H000568

FREDERICO R. BILLINGS,
EMPLOYEE

CLAIMANT

IDAHO TIMBER OF CARTHAGE, LLC,
INCORPORATED, EMPLOYER

RESPONDENT

AIG CLAIMS,
CARRIER/TPA

RESPONDENT

OPINION FILED AUGUST 24, 2021

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

Claimant, pro se, failed to appear.

Respondents represented by Mr. David C. Jones, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 18, 2021, 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 (Repl. 2012), and Arkansas Workers' Compensation Commission Rule 099.13.

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

The record consists of the transcript of the August 18, 2021, hearing and the documents contained therein. The Commission's file has also been made a part of the record. It is hereby incorporated herein by reference. Respondents introduced into evidence an exhibit consisting of thirty-eight (38) pages. It was marked as Respondents' Exhibit No. 1.

DISCUSSION

On January 29, 2020, the Claimant's attorney filed with the Commission, a claim for Arkansas workers' compensation benefits via a Form AR-C. Specifically, Counsel alleged: "He [the Claimant] was running a piece of equipment when the equipment got jammed. He climbed on the piece of equipment to fix it while it was turned off. The equipment was covered in sawdust, causing him to slip. When he slipped he hit his elbow, causing damage." Counsel for the Claimant checked off all the boxes for both initial and additional benefits. He also wrote, "Any other benefit Claimant is entitled to by law."

The respondent-insurance-carrier filed a Form AR-2, with the Commission on February 11, 2020, wherein they controverted compensability of the claim. Specifically, the Respondents wrote: "There is no medical report to support an injury. The associate failed to timely report an injury to his employer."

On August 21, 2020, the Claimant attorney requested a hearing. Per said request, this matter was scheduled for a prehearing telephone conference before the Commission with the parties for November 4, 2020. However, on the day of the telephone conference, the Claimant's attorney sent an email to the Commission saying that the parties mutually agreed that this matter should be removed from the Commission's hearing docket. Counsel also essentially said that they were going to engage in further discovery and attempt to work out a resolution. As a result, on November 4, 2020, the file was returned to the Commission's general files.

Subsequently, there has been no action on the part of the Claimant to prosecute this claim, or otherwise pursue benefits.

On May 21, 2021, the Claimant's attorney filed a motion to withdraw as counsel of record for the Claimant in this matter. The Full Commission entered an order on June 8, 2021 granting

the motion to withdraw.

Still, there has been no action on the part of the Claimant to prosecute this claim, or otherwise pursue benefits.

Therefore, the Respondents filed a Respondents' Motion to Dismiss With or Without Prejudice and a Respondents' Brief in Support of Motion With or Without Prejudice, with the Commission on July 12, 2021, along with Certificates of Service to the Claimant.

The Commission sent a Notice to the Claimant on July 14, 2021, informing him of the Respondents' motion, and a deadline for filing a written response. However, information obtained by the Commission from the United States Postal Service demonstrates that they were unable to deliver this parcel of mail to the Claimant. Specifically, this notice was returned to the Commission by the Post Office marked, "Return to Sender 'Vacant' Unable to Forward."

Pursuant to a Hearing Notice dated July 21, 2021, the Commission notified the parties that the matter had been set for a hearing on the motion to dismiss. Said hearing was scheduled for August 18, 2021, at 9:30 a.m., at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas.

Information received by the Commission from the United States Postal Service appears to reflect that they were also unable to deliver this item due for the same reasons cited above.

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. As such, Counsel basically moved that this claim be dismissed with or without prejudice under Ark. Code Ann. §11-9-702(a)(4) and (d) and Commission Rule 099.13.

As shown by the evidence recounted above, (1) reasonable notice of the motion to dismiss was attempted on the parties of the hearing; and (2) Claimant has failed to pursue his claim because he has taken no bona fide action in pursuit of it (including appearing at the August 18, 2021 hearing to argue against its dismissal) since August 21, 2020-over a year ago. Thus, the evidence preponderates that dismissal is warranted under Rule 099.13. Because of this finding, it is unnecessary to address the application of Ark. Code Ann. § 11-9- 702 (Repl. 2012). That leaves the question of whether the dismissal of the claim should be with or without prejudice. The Commission possesses the authority to dismiss claims with prejudice. Loosey v. Osrose Wood Preserving Co., 23 Ark. App. 137, 744 S.W.2d 402 (1988). In Abo v. Kawneer Co., 2005 AWCC 226, Claim No. F404774 (Full Commission Opinion filed November 15, 2005), the Commission wrote: “In numerous past decisions, this Commission and the Appellate Courts have expressed a preference for dismissals without prejudice.” (emphasis added) (citing Professional Adjustment Bureau v. Strong, 75 Ark. 249, 629 S.W.2d 284 (1982)). In light of all the above authorities, I find that the dismissal of this claim should be and hereby is entered without prejudice, to the refiling of it within the limitation period specified by law.

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 January 29, 2020, the Claimant’s attorney filed a Form AR-C, with the Commission, alleging that the Claimant sustained an injury to his elbow in the course of his employment with the Respondents.
3. The respondent-insurance-carrier filed a Form AR-2, with the Commission on February 11, 2020 controverting the claim based on a lack of medical evidence to support the compensability of a claim.

4. The Claimant failed to prosecute his claim for workers' compensation benefits.
5. On July 12, 2021 the Respondents filed with the Commission, a Respondents' Motion to Dismiss With or Without Prejudice, along with a Respondents' Brief in Support of Motion to Dismiss With or Without Prejudice.
6. The evidence preponderates that Claimant has failed to prosecute his claim.
7. Appropriate Notice of this hearing was tried on all parties to their last known address, in the manner prescribed by law.
8. The motion to dismiss is granted; the claim is hereby dismissed without prejudice pursuant to Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER

Pursuant to the findings of fact and conclusions of law set forth above, this claim is hereby respectfully dismissed under Arkansas Workers' Compensation Commission Rule Commission Rule 099.13, without prejudice to the refiling of this claim within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge