

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.:H005079

EVER MARQUEZ BONILLA,
EMPLOYEE

CLAIMANT

DARRAGH COMPANY,
EMPLOYER

RESPONDENT

ZURICH AMERICAN INSURANCE CO./
GALLAGHER BASSETT,
INSURANCE CARRIER/THIRD PARTY
ADMINISTRATOR (TPA)

RESPONDENT

OPINION FILED DECEMBER 5, 2022

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

Claimant, pro se, appeared at the hearing.

Respondents represented by Mr. Rick Behring, Jr., Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on Respondents motion to dismiss for want of prosecution, on November 30, 2022, in the above-styled claim for Arkansas 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 matter should be dismissed due to the Claimant's failure to diligently prosecute it under the provisions of Ark. Code Ann. §11-9-702(a)(4) (Repl. 2012) and §11-9-702(d), as well as Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was provided to all parties in the manner prescribed by law.

The record comprises of the hearing transcript from November 30, 2022, and the entire Commission's file, which has been incorporated by reference. Respondents also offered into evidence a documentary exhibit consisting of eighteen (18) numbered pages. It was marked as Respondents' Exhibit 1.

The Claimant, Mr. Ever Marquez Bonilla, testified during the hearing. Mr. Nicolas Durand served as the Spanish-speaking interpreter for Mr. Bonilla.

Background

The Claimant's former attorney filed a Form AR-C with the Commission in the above-styled claim on July 27, 2020. Per this document, the Claimant alleged he sustained an injury while working for the respondent-employer on June 24, 2020. Specifically, in the Form AR-C, the cause of the Claimant's injury and the part of his body being injured, was described as follows: "The Claimant was picking up iron bars with a tractor when one hit him on his right knee. Claimant sustained injuries to his knee and other whole body." Counsel requested on behalf of the Claimant, both initial and additional workers' compensation benefits. Of importance, Claimant's counsel checked all the boxes for both types of benefits.

On or about August 10, 2020, Respondents (the insurance carrier) filed a Form AR-2 with the Commission acknowledging this as an accepted claim for an injury to the Claimant's knee. Hence, the carrier began paying benefits on this claim. On or about August 20, 2020, Respondents filed an Amended Form AR-2 with the Commission regarding this claim. The record is unclear as to why the afore action was taken.

Yet, there was no action whatsoever taken by the Claimant to pursue his claim for workers' compensation benefits. On May 21, 2021, the Claimant's former attorney filed with the Commission a letter-motion to withdraw as counsel of record for the Claimant in this claim. There was no response or objection filed with the Commission in this regard. Therefore, the Full Commission entered an order on June 8, 2021, granting the Claimant's attorney's motion to withdraw as counsel of record in this claim.

Still, there was no activity on the part of the Claimant to prosecute or pursue his claim for workers' compensation benefits. Most notably, the Claimant has not requested a hearing or attempted to pursue his claim, since the filing of the Form AR-C.

Therefore, on October 4, 2022, Respondents filed with the Commission a Motion to Dismiss and Incorporated Brief in Support, which was accompanied by a Certificate of Service to the Claimant. This document shows that Respondents served a copy of the foregoing pleading on the Claimant by depositing a copy thereof in the United States Mail.

Subsequently, on October 6, 2022, I sent a letter to the Claimant informing him of Respondents' motion to dismiss, with a deadline of twenty (20) days for filing a written objection with the Commission.

There was no response from the Claimant.

On October 27, 2022, the Commission sent a Notice of Hearing to the parties by way of certified mail, to inform them that a hearing on Respondents' motion to dismiss was scheduled for November 30, 2022, at 12:00 p.m., in Little Rock.

Yet, there was no written response from the Claimant. However, the Claimant telephoned the Commission on November 15, 2022, to inquire about the upcoming hearing and to request a Spanish-speaking interpreter, which was done.

Nevertheless, the dismissal hearing was in fact conducted on Respondents' motion to dismiss. The Claimant appeared at the dismissal hearing to agree with his workers' compensation claim being dismissed. In fact, the Claimant confirmed that he has received all the benefits to which he is due from his work-related injury of June 24, 2020. Counsel for Respondents moved that this claim be dismissed due to the following reasons: Specifically, per counsel, all appropriate benefits have been paid to and on behalf of the Claimant. Counsel noted that no action has been taken by the Claimant to prosecute his claim since the filing of the Form AR-C in July of 2020. As a result, counsel requested that this claim be dismissed without prejudice under the provisions of Ark. Code Ann. §11-9-702(a)(4), §11-9-702(d), and Commission Rule 099.13.

Discussion

In that regard, Ark. Code Ann. §11-9-702(a)(4) (Repl. 2012) reads:

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within the limitation periods specified in subdivisions (a)(1)-(3) of this section.

Ark. Code Ann. §11-9-702 (d) (Repl. 2012) provides:

If within six (6) months after the filing of a claim for additional compensation no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

Commission Rule 099.13 states:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

My review of the record shows that it has been more than twenty-nine (29) months since the Claimant filed a Form AR-C for workers' compensation benefits for his accidental work-related injury of June 24, 2020. However, despite the passing of more than two years, the Claimant has failed to make a request for a hearing before this Commission. Most notably, the Claimant agrees with his claim being dismissed because he has received all benefits to which he is entitled to under the Arkansas Workers' Compensation Act.

Therefore, based on my review of the documentary evidence, and all other matters properly before this Commission, I find that Respondent's motion to dismiss the within claim for workers' compensation benefits should be granted pursuant to Ark. Code Ann. §11-9-702(a)(4), Ark. Code Ann. §11-9-702 (d), and Commission Rule 099.13. This dismissal is without prejudice, to the refiling of this claim 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. Reasonable notice of the motion to dismiss and hearing was provided to all the parties in the manner prescribed by law.
3. The Claimant filed a Form AR-C for his June 24, 2020, work-related injury on July 27, 2020. Since this time, the Claimant has not requested a hearing on the merits or otherwise tried to pursue his claim for workers' compensation benefits.
4. The Respondents filed a motion to dismiss on October 4, 2020.
5. The Claimant informed the Commission that he agrees with his claim being dismissed because he has received proper benefits for his accidental work-related knee injury of June 2020. This evidence proves that the Claimant has abandoned his claim.
6. The evidence preponderates that Respondents' motion to dismiss for want of prosecution is warranted.
7. That Respondents' motion to dismiss the within claim for workers' compensation benefits is hereby granted pursuant to Ark. Code Ann. §11-9-702 (a)(4), Ark. Code Ann. §11-9-702 (d), and Commission Rule 099.13, without prejudice, to the refiling within the specified limitation period.

ORDER

Based on the foregoing findings of fact and conclusions of law, the claim for workers' compensation benefits filed in this matter is dismissed without prejudice, to the refiling of this claim within the statute of limitation period specified by law.

IT IS SO ORDERED.

Honorable Chandra L. Black
Administrative Law Judge

