

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. HOO6981

BROCK K. BOTTORFF,
EMPLOYEE

CLAIMANT

SOUTHERN STAR, INC.,
EMPLOYER

RESPONDENT

TRAVELERS INDEMNITY COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 1, 2021

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

Claimant represented by Ms. Laura Beth York, Attorney at Law, Little Rock, Arkansas. Ms. York waived her appearance at the hearing.

Respondents represented by Ms. Amy C. Markham, 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 29, 2021, 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). Here, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the hearing transcript of the June 29, 2021. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

No testimony was taken during the hearing.

DISCUSSION

The Claimant 's attorney filed a Form AR-C with the Commission on September 23, 2020 in the above styled claim. Per this document, the Claimant asserted his entitlement to both initial and additional benefits. His alleged work-related incident occurred on September 3, 2020. Counsel for the Claimant briefly described the cause of injury and the part of body injured: “Client was rear-ended by OD in stopped traffic. Sustained injuries to back & neck, and other whole body.”

It appears that on or about September 25, 2020, the Respondents filed a Form AR-2 with the Commission controverting this claim. Specifically, the Respondents wrote: “The Claimant was not in the course and scope of employment at the time the accident occurred.”

Since the filing of the Form AR-C, the Claimant has failed to request a hearing before the Commission on the merits.

Therefore, on May 17, 2021, the Respondents filed a Motion to Dismiss of Respondents [sic], with a Certificate of Service to the Claimant's attorney. Of note, it appears that the incorrect attorney was supplied service. However, ultimately the Commission provided the correct attorney with notice of the pending motion. Specifically, on May19, 2021, the Commission sent a notice to the Claimant's attorney and the Claimant of the motion with a deadline of June 9, 2021 for filing a written objection. Delivery information provided to the Commission on May 24, 2021 from the United States Postal Service shows that this notice was delivered to the Claimant's last known address on May 20, 2021.

Per an email of June 10, 2012, the Claimant's attorney wrote the Commission, the following correspondence. It reads, in relevant part:

Thank you for your time today. Please note the following:

- (1) I do not object to the Motion to Dismiss WITHOUT prejudice.
- (2) I waive my appearance at the Motion to Dismiss Hearing.
- (3) I filed a Motion to withdraw recently. Please disregard the Motion to Withdraw that was filed.

On June 10, 2021, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for June 29, 2021, on the Respondents' motion.

Ultimately, a hearing was conducted before the Commission, on the Respondents' motion as previously scheduled. During the hearing, counsel for the Respondents moved that the within claim be dismissed due to a lack of prosecution.

My review of the record shows that more than six (6) months have passed after the filing of the Form AR-C for a claim of compensation. However, since this time the Claimant has failed to make a bona fide request for a hearing with respect to this claim. As such, I am persuaded that the Claimant has had ample time to pursue his claim for workers' compensation benefits but has failed to do so. Moreover, the Claimant does not object to this claim being dismissed without prejudice. Hence, the Claimant has failed to timely prosecute his 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 and is hereby granted under Ark. Code Ann. §11-9-702, and Commission Rule 099.13. Accordingly, this claim for workers' compensation benefits is dismissed without prejudice to the refiling within the specified limitation period.

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. The Claimant filed a Form AR-C with the Commission on or about September 23, 2020, alleging that he sustained a work-related injury in the course and scope of his employment with the respondent-employer on September 3, 2020.
3. That more than six (6) months have passed after the filing of the Form AR-C, for a claim of compensation. Since this time, there has been no request for a hearing.
4. The Respondents filed with the Commission a motion for dismissal on May 17, 2021.
5. The Claimant does not object to this claim being dismissed-without prejudice. That dismissal of this claim is warranted.
6. That the Respondents' motion to dismiss is hereby granted pursuant to Ark. Code Ann. §11-9-702, and Commission Rule 099.13, without prejudice to the refiling of the claim within the applicable limitation period.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim for workers' compensation benefits. This claim is dismissed under the provisions of Ark. Code Ann. §11-9-702, and Commission Rule 099.13, without prejudice to the refiling of this claim within the specified limitation period.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge