

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H302922

ROBERT BOYD, Employee

CLAIMANT

MADISON COUNTY WASTE MANAGEMENT, Employer

RESPONDENT

AAC RISK MANAGEMENT SERVICES, Carrier/TPA

RESPONDENT

OPINION FILED JULY 18, 2024

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by LAURI THOMAS, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The claimant in this matter is a 34-year-old male who sustained a compensable injury to his lower back on February 23, 2023. At the time of the hearing in this matter the claimant had returned to work. The claimant first sought medical treatment on February 24, 2023, with Dr. Shawn Brown at MANA Medical Providers for his compensable back injury. The claimant sometime after that hired his current counsel and filed a form AR-C on May 4, 2023. Sometime after those events, the respondent accepted and began to pay for the claimant's medical treatment. That treatment was primarily through Ozark Orthopedics and included physical therapy and an epidural injection in the claimant's low back on June 27, 2023, by Dr. Mark Miedema. The claimant eventually underwent surgical intervention at the hands of Dr. Gannon Randolph on July 26, 2023, in the form of a left L5-S1 microdiscectomy. The claimant testified that he last saw Dr. Randolph on December 28, 2023. Following is a portion of that testimony:

Q Robert, when was the last time you saw Dr. Randolph?

A It was the 28th of December of last year.

Q And after that visit, did Dr. Randolph want you to schedule a future appointment?

A He did but at the time he was changing practices and moving from Ozark Orthopedics to UAMS and was uncertain of his schedule.

Q So it's your understanding that he would like to see you a year after your surgery, which would be this July?

A Yes, ma'am.

Q Have you made an appointment with him yet?

A I have not and it was kind of contingent on as if he was going to still be qualified or accepted by worker's comp to continue treatment.

Q And by going to see Dr. Randolph for your follow-up, do you believe that you – it's medically reasonable and necessary for you to have a follow-up appointment?

A Absolutely.

Q With your surgeon?

A Yes.

The claimant also underwent an impairment evaluation at Functional Testing Centers, Inc., on February 5, 2024. That report is signed by Darin Bell, occupational therapist, and Casey Garretson, occupational therapist. The report states that the claimant has a whole person impairment of 10% regarding the claimant's compensable low back injury.

The respondents filed a motion to dismiss the claimant's case for failure to prosecute under ACA §11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Commission

on February 20, 2024. That motion was filed 209 days after the claimant’s surgical intervention and 15 days after his impairment evaluation.

ACA §11-9-702 (4) states:

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 limitation periods specified in subdivisions (a)(1)-(3) of this section.

ACA §11-9-702 (d) states:

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.

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 for 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)

The claimant, as quoted above, is to see Dr. Randolph again and has been unable to schedule that appointment, at least in part, because Dr. Randolph has changed medical practices.

The claimant also testified while being questioned by respondent's attorney about medical bills he has been paying out-of-pocket as follows:

Q At this date, today, is there anything that you're claiming is not paid that should have been paid by my client?

A The only thing that hasn't been paid was MRI and X-ray.

Q Is that something that still remains unpaid or do you know?

A We've been – my wife and I have been currently paying it just out-of-pocket.

Q Okay. Is that something that you could get documentation on to your attorney?

A I could.

Q Was it something – tell us when these diagnostic tests were done.

A They were done before I'd actually sought an attorney at the time. I went to my – I did what my boss told me to do, go to the doctor directly after. The very next day I did. He went through the motions. Basically, we thought it was something that maybe was just gonna take care of itself. It wasn't taking care of itself. I went through the X-ray, went through the MRI, and once I realized that I was going to have to have surgery, it was going to be not a temporary deal, I sought an attorney.

This administrative law judge inquired about the unpaid medical bills at the hearing in this matter and had an exchange with the claimant and the respondent's attorney about unpaid bills and the claimant's upcoming visit with Dr. Randolph as follows:

THE COURT: This MRI – I think X-rays is what you said, what doctor ordered those? Was it the doctor that...

THE WITNESS: It was my primary care physician. It was the doctor that I was – my family doctor.

THE COURT: Okay.

MS. WOODS: Judge, I would just like to state for the record that if we could get the documentation, I'll certainly get it to my client for consideration, but whether or not that is something that's approved or is denied has nothing to do with whether or not the case is actually being prosecuted.

THE COURT: Well, I mean so the respondents stand ruling – obviously, he is asking to go back and see a doctor one year after his surgical intervention. I'm pretty sure that was his testimony. He thought he should have follow-up.

Are you telling us your client is willing to pay for that?

MS. WOODS: I can't state for certain, but that is something that I would definitely advise my client. Even if the dismissal is entered, that has nothing to do with approval of reasonable and necessary medical care. I can't give you an answer as to whether she would, but we did have a discussion this week about Dr. Randolph moving locations, and she said she would be fine with him going to the new location at UAMS to see Dr. Randolph.

Both ACA §11-9-702 (4) and ACA §11-9-702 (d), as well as Commission Rule 099.13 provide discretion in deciding whether a case be dismissed, and in all instances the language is “may” and not shall. This is not a case with a long and tortured history. In fact, the claimant's compensable injury that resulted in back surgery, was just short of a year old when the respondent filed a motion to dismiss. Questions remain about unpaid medical bills and an unscheduled visit to the claimant's surgeon. It appears to this administrative law judge that this particular claimant has not ignored or wasted the time of the Commission or the respondent, but instead, has actively pursued indemnity and medical benefits to return himself as much as possible to his pre-injury financial and physical state and continues to do so. The respondent's motion to dismiss is denied.

ORDER

Pursuant to the above findings and conclusions, I have no alternative but to deny the motion to dismiss filed by the respondents.

If respondents have not already done so, they are directed to pay the court reporter, Veronica Lane, her fees and expenses within thirty (30) days of receipt of her invoice.

IT IS SO ORDERED.

**ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**