

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H307026

JEROME BRASWELL,
EMPLOYEE

CLAIMANT

DEVIL DOG MANAGEMENT, LLC, d/b/a
G1 STAFFING, EMPLOYER

RESPONDENT

TECHNOLGY INSURANCE CO./AM TRUST NORTH AMERICA,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED OCTOBER 31, 2024

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

The Claimant, *pro se*, did not appear at the hearing.

Respondents represented by the Honorable William C. Frye, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on October 30, 2024 , 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 had on all parties to their last known address, in the manner prescribed by law.

No testimony was taken at the dismissal hearing.

The record consists of the transcript of the October 30, 2024, dismissal hearing and the documents held therein. Specifically, Commission's Exhibit 1 includes thirteen (13) total pages

of correspondence, pleadings and various other forms related to this claim, along with tracking information from the United States Postal Service; and Respondents' Exhibit 1 consisting of two (2) pages, which includes the twenty day-letter, and the Form AR-C.

Procedural History

On October 26, 2023, the Claimant's former attorney filed with the Commission a claim for Arkansas workers' compensation benefits on behalf of the Claimant via a Form AR-C. Per this document, the Claimant alleged that he sustained injuries to his left hip and other whole body during the course and in the scope of his employment with the respondent-employer, August 24, 2023. According to this document, the Claimant asserted his entitlement to both initial and additional workers' compensation benefits.

The respondent-insurance-carrier filed a Form AR-2, with the Commission on November 8, 2023, wherein they accepted this as a compensable "*medical-only*" claim. However, the Respondents stated on this form that they did not have any documentation to support any loss of time.

Following the filing of the Form AR-C on October 26, 2023, there was no action taken on the part of the Claimant to prosecute this claim by way of a bona fide request for a hearing on the merits.

However, on April 8, 2024, the Claimant's attorney filed with the Commission a motion to withdraw from representing the Claimant in this matter. There being no objection to the motion for the Claimant's attorney to withdraw as counsel of record, the Full Commission entered an Order on May 3, 2024, granting the motion to withdraw.

Still, there was no action on the part of the Claimant to prosecute this claim by way of a bona fide request for a hearing, nor did he take any other affirmative action to pursue this claim.

As a result, the Respondents filed a letter-motion to dismiss this claim with the Commission on or about September 3, 2024. The Respondents mailed the Claimant a certified copy of the dismissal letter.

The Commission sent a letter to the Claimant on September 3, 2024, informing the Claimant of the Respondents' motion, and a deadline of twenty (20) days, for filing a written response. Said letter was mailed to the Claimant by both first-class and certified mail. Tracking information received by the Commission from the United States Postal Service shows that they delivered this parcel of mail to the Claimant on September 5, 2024. Moreover, the letter sent by first-class mail has not been returned to the Commission.

There was not any type of reply or response from the Claimant.

Therefore, on September 24, 2024, the Commission notified the parties via a Notice of Hearing that this claim had been set for a hearing on the Respondents' motion to dismiss. Said hearing was scheduled for October 30, 2024, at 9:00 a.m. in Little Rock at the Arkansas Workers' Compensation Commission.

Said letter was mailed to the Claimant by both first-class and certified mail. The information received from the Postal Service shows that they were unable to deliver the hearing notice to the Claimant. Hence, the notice was returned to the Commission with an inscription on the outside of the envelope indicating that they were unable to deliver this parcel of mail to the Claimant. Nevertheless, the notice letter sent by first-class mail has not been returned to the Commission. Hence, the evidence preponderates that the Claimant received proper notice of the dismissal hearing.

Accordingly, the dismissal hearing was held as scheduled. The Claimant did not appear at the hearing, but the Respondents appeared through their attorney. Counsel for the Respondents

basically argued that the Claimant has failed to prosecute his claim for workers' compensation benefits, as no request for a hearing has ever been made. He further noted that the Claimant has not taken any action to prosecute his claim in over more than six (6) months. More specifically, counsel noted that the Claimant has not taken any action to advance his claim since the filing of the Form AR-C, which was done one year ago.

Therefore, the Respondents' attorney moved that this claim be dismissed pursuant to Ark. Code Ann. §11-9-702, and/or Commission Rule 099.13, *without prejudice*.

Adjudication

The statutory provisions and Arkansas Workers' Compensation Rule applicable in the Respondents' request for dismissal of this claim are outlined below:

Specifically, Ark. Code Ann. §11-9-702(d) 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 reads:

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)

The Respondents accepted this claim as compensable and have paid some benefits to and on behalf of the Claimant for his accidental work-related injury of August 24, 2023. Hence, this is a claim for additional benefits.

With that in mind, my review of the evidence shows that the Claimant has had ample time to pursue his claim for additional workers' compensation benefits, but he has failed to do so. Specifically, the Claimant has not requested a hearing or otherwise made any effort to prosecute his claim for workers' compensation benefits since the filing of the Form AR-C, more than one year ago; and nor has he resisted the motion for dismissal or even responded to the notices of this Commission. Hence, the evidence preponderates that the Claimant has failed to prosecute or otherwise pursue this claim for additional workers' compensation benefits. Moreover, considering that the Claimant did not respond to the notices of this Commission and did not appear at the dismissal hearing to oppose the motion, I am convinced that the Claimant has abandoned his claim.

Therefore, after consideration of the evidence before me, I find that the Respondents' motion to dismiss for a lack of prosecution to be well taken. I thus find that pursuant to Ark. Code Ann. §11-9-702 (d), and Commission Rule 099.13, this claim for additional workers' compensation benefits should be dismissed *without prejudice* to the refiling of it within the limitation period specified under the Arkansas Workers' Compensation Act (the "Act").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Because of the record as a whole, I hereby make the following findings of facts 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 Respondents filed with the Commission a motion for dismissal of this claim, for which a hearing was held.

3. The Claimant has not requested a hearing since his former attorney filed the Form AR-C, which was done more than one year ago. Hence, the evidence preponderates that the Claimant has failed to prosecute his claim for workers' compensation benefits based upon the relevant provisions of the specified statute, Ark. Code Ann. §11-9-702(d), and Rule 099.13 of this Commission.
4. Appropriate Notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' motion to dismiss this claim due to a lack of prosecution is hereby granted, *without prejudice*, per Ark. Code Ann. §11-9-702, and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER

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

IT IS SO ORDERED.

Chandra L. Black
Administrative Law Judge