

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G907731

DWYANE BROWN, EMPLOYEE

CLAIMANT

EVERGREEN PACKAGING, LLC, EMPLOYER

RESPONDENT

**ACE AMERICAN INSURANCE CO./
GALLAGHER BASSETT SERVICES, INC., CARRIER/TPA**

RESPONDENT

OPINION FILED JUNE 3, 2021

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant, Mr. Dwayne Brown, was represented at the hearing by Ms. Laura Beth York, Attorney at Law, Little Rock, Arkansas. Claimant was not present at the hearing.

Respondents were represented at the hearing by Mr. Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on May 21, 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 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.

The record consists of the transcript of the May 21, 2021, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated herein by reference.

DISCUSSION

Claimant alleged that on or about September 6, 2019, he sustained an injury to his left leg, left Achilles' tendon, left ankle, and other whole body while working for the Respondent-

Employer. On November 25, 2019, Claimant filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of September 6, 2019, and asserted his entitlement to workers' compensation benefits. In the Form AR-C, Claimant's cause of injury was described as: "Claimant was in the course and scope of employment when he stepped down from a step, turned around and felt a pop. Claimant sustained injuries to his left leg, left achilles, left ankle and other whole body." Subsequently, there was no action taken by Claimant to prosecute his claim after the filing of the Form AR-C on November 25, 2019.

On December 3, 2019, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying the claim due to no evidence of a work-related injury.

Therefore, on March 17, 2021, Respondents filed with the Commission a letter Motion to Dismiss for Failure to Prosecute. On March 22, 2021, the Commission sent notice to Claimant advising him of Respondents' motion and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated April 14, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents' letter Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for May 20, 2021, at 11:00 a.m., at the Federal Building, Room 3611, 100 East 8th Street, Pine Bluff, Arkansas.¹ Still, there was no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents' letter Motion to Dismiss for Failure to Prosecute. Both Claimant and Respondents appeared through their respective attorneys.

¹ At the request of Respondent's Counsel, the hearing was rescheduled for May 21, 2021, at 2:00 p.m., at the Arkansas Workers' Compensation Commission, 324 S. Spring Street, Little Rock, Arkansas. Claimant had no objection.

Respondents' Counsel advised that the claim of an alleged injury to Claimant's left leg, Achilles' tendon, and ankle was denied, as there was no evidence of a work-related injury. Counsel further advised that since the filing of the Form AR-C on November 25, 2019, Claimant has failed to pursue his claim for workers' compensation benefits. Furthermore, Claimant had returned to work for Respondent-Employer and had earned an increase in pay. As such, Counsel requested that the claim be dismissed, without prejudice, pursuant to Ark. Code Ann. § 11-9-702, and our Rule 099.13. Claimant's Counsel advised that Claimant had no objection to the letter Motion to Dismiss without prejudice.

A review of the evidence shows that Claimant has had sufficient time to pursue his claim for workers' compensation benefits. It has been more than one (1) year since Claimant filed a Form AR-C in this matter, and to date, Claimant has not requested a *bona fide* hearing or otherwise attempted to prosecute his claim. Hence, Claimant has failed to timely prosecute his claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents' letter motion for the dismissal of this claim to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for benefits should be dismissed, without prejudice, to the refiling within the applicable time 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.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Claimant alleged that on or about September 6, 2019, he sustained an injury to his left leg, left Achilles' tendon, left ankle, and other whole body while working for Respondent-Employer.

3. On November 25, 2019, Claimant filed a Form AR-C with the Commission seeking workers' compensation benefits.
4. On December 3, 2019, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying the claim due to no evidence of a work-related injury to Claimant's left leg, Achilles' tendon, and ankle as a result of an incident on September 6, 2019.
5. More than one (1) year has passed since Claimant filed a Form AR-C with the Commission, and since this time Claimant has failed to make a *bona fide* request for a hearing or otherwise resolve his claim for workers' compensation benefits.
6. On March 17, 2021, Respondents filed with the Commission a letter Motion to Dismiss for Failure to Prosecute.
7. Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no action has been taken by Claimant in furtherance of his claim, as he has failed to timely prosecute this matter.
8. Respondents' letter Motion to Dismiss for Failure to Prosecute is well founded.
9. Respondents' letter Motion to Dismiss for Failure to Prosecute should be granted pursuant to Ark. Code Ann. § 11-9-702, and Commission Rule 099.13, without prejudice, to the refileing of the claim within the applicable time period.
10. Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refileing of this claim within the applicable time period.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE