

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. HOO3759

WENDY BUFFINGTON,
EMPLOYEE CLAIMANT

FAMILY DOLLAR STORES,
EMPLOYER RESPONDENT

GALLAGHER BASSETT SERVICES, INC.,
INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR RESPONDENT

OPINION FILED MAY 7, 2021

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

Claimant, pro se, not appearing.

Respondents represented by Mr. Randy P. Murphy, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' Motion to Dismiss for Failure to Prosecute, on April 14, 2021 in the above styled claim pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), for a determination of 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 transcript of the April 14, 2021 hearing. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

DISCUSSION

The Claimant's former attorney filed a Form AR-C with Commission on June 23, 2020

requesting workers' compensation benefits on behalf of the Claimant. Per this Form AR-C, the Claimant asserted her entitlement to both initial and additional indemnity and medical benefits. The alleged date of her accidental injury was May 21, 2020. Pursuant to the Form C, the Claimant's alleged injury was described as: "Claimant was at work carrying a box when she hit a cart and fell. She sustained injuries to her right knee, right leg left leg and other whole body."

It appears that on or about June 19, 2020, the Respondents filed a Form AR-2 with the Commission controverting this claim in its entirety. Specifically, the Respondents wrote: "Controverted claim pending further investigation."

On November 30, 2020, the Claimant's attorney filed a motion to withdraw from representing the Claimant in this matter. The Full Commission entered an order on December 16, 2020, granting the Claimant's attorney motion to withdraw as counsel of record for the Claimant in the within claim for benefits.

Since this time, the Claimant has failed to request a hearing on the merits in her claim for workers' compensation benefits.

Therefore, on January 25, 2021, the Respondents filed with the Commission, a Respondents' Motion to Dismiss for Failure to Prosecute, with a Certificate of Service to the Claimant. On March 2, 2021, the Commission sent a notice to the Claimant notifying her of the Respondents' motion, with a deadline of March 23, 2021, for filing a written objection. However, there was no response from the Claimant.

On March 24, 2021, the Commission sent a Notice of Hearing to the parties letting them know that a hearing had been scheduled for April 14, 2021, on the Respondents' motion. Still, there was no response from the Claimant. However, tracking information from the United Postal Service shows that they delivered this parcel of mail to the Claimant's last known address listed

with the Commission. Said notice was delivered to the Claimant's home address, on March 27, 2021. As such, the record currently before me proves that proper Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

Nevertheless, a hearing was conducted before this Commission, on the Respondents' Motion to Dismiss for Failure to Prosecute, on April 14. During the hearing, counsel for the Respondents asserted, among other things, that there has been no effort by the Claimant to prosecute her claim, which occurred on May 21, 2020. Per counsel for the Respondents, they ultimately accepted this claim as compensable with payment of benefits. Counsel further noted that there has been no activity since the Claimant's attorney withdrew several months ago. As such, the Respondents moved that the claim be dismissed due to a lack of prosecution.

In that regard, Arkansas Workers' Compensation Commission Rule 099.13 reads: 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. *See generally Johnson v. Triple T Foods*, 55 Ark. App. 83, 85, 929 S.W.2d 730 (1996).

A review of the evidence shows that the Claimant has had ample time to pursue her claim for workers' compensation benefits. However, she has failed to do so. The Claimant has failed to respond to the written notices of this Commission. Moreover, the Claimant failed to appear at the hearing to object to the dismissal.

Therefore, based on my review of the Respondents' motion, the Claimant's failure to respond to the notices of this Commission, her lack of objection to this dismissal, and all other matters properly before the Commission, I find that the Respondents' Motion to Dismiss for Failure to Prosecute this claim should be and is hereby granted under 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. On or about, June 23, 2020, the Claimant's former attorney filed with the Commission, a Form AR-C for both initial and additional workers' compensation benefits due to an alleged injury on May 21, 2020.
3. The Respondents filed a Form AR-2, with the Commission denying the within claim on or about June 19, 2020. It appears that Respondents ultimately accepted the claim and paid some benefits.
4. Subsequently, there was no action taken by the Claimant to prosecute her claim.
5. On January 25, 2021, the Respondents filed with the Commission, a Motion to Dismiss for Failure to Prosecute.
6. The Commission gave the Claimant notice of the motion. There was no response from Claimant. Ultimately, a hearing was scheduled on the Respondents' motion.
7. Said hearing was held on April 14, 2021, for a ruling on the Respondents' Motion to Dismiss for Failure to Prosecute. The Claimant failed to appear for the hearing; although appropriate notice of the hearing was had on all the parties in the manner as prescribed by law to their last known address.
8. The Claimant has had ample time to prosecute her claim for workers' compensation benefits, but she has failed to do so. Moreover, the Claimant has failed to respond to the written notices of this Commission; and has not objected to the dismissal.
9. That the Respondents' Motion to Dismiss should be granted pursuant to Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period.

ORDER

Based upon the foregoing Findings and Conclusions of Law, I have no alternative but to dismiss this claim for workers' compensation benefits. This claim is hereby respectfully dismissed under 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