

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H009567

TAMMY L. BUNKER,
EMPLOYEE

CLAIMANT

OAK RIDGE HEALTH & REHAB,
EMPLOYER

RESPONDENT

CCMSI,
CARRIER/TPA

RESPONDENT

OPINION FILED AUGUST 19, 2021

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK in Little Rock, Pulaski County, Arkansas.

Claimant, pro se, did not appear.

Respondents represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 18, 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(Repl. 2012) and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate notice of this hearing was tried on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the August 18, 2021, hearing and the documents contained therein. The Commission's file has also been made a part of the record. It is hereby incorporated herein by reference. Respondents introduced into evidence a Respondents' Hearing Exhibit Index. It consisted of nine pages and was marked as Respondents' Exhibit 1.

DISCUSSION

In the claim at bar, the Claimant contracted COVID-19 while working for the respondent-employer. On November 23, 2020, the Claimant filed a Form AR-C with the Commission for both initial and additional benefits. She also stated on this document, "Loss of work due to positive COVID test results." The Claimant alleged an injury date of November 3, 2020.

The respondent-insurance-carrier filed a Form AR-2, with the Commission on December 18, 2020, wherein they accepted compensability for the claim. Both medical and indemnity benefits were paid to and on behalf of the Claimant by the carrier.

After the filing of the Form AR-C, the Claimant took no action whatsoever to prosecute her claim for workers' compensation benefits.

Bunker- H009567

Therefore, on June 17, 2021, the Respondents filed with the Commission, a Motion to Dismiss for Failure to Prosecute. They also filed a Certificate of Service wherein they certified that a copy of the foregoing motion was mailed to the Claimant via U.S. Mail.

However, there was no response from the Claimant.

On June 18, 2021, the Commission sent a Notice to the Claimant notifying her of the Respondents' motion, and a deadline of July 16, 2021 for filing a written response.

Still, there was no response from the Claimant with respect to this correspondence. However, information received by the Commission from the United States Postal Service via e-mail shows that they delivered this notice to the Claimant on June 28, 2021. The delivery information sheet bears the Claimant's signature and printed name.

Per a Hearing Notice dated July 20, 2021, the Commission notified the parties that the matter had been set for a hearing on the Respondents' Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for August 18, 2021 at 11:00 a.m., at the Arkansas Workers' Compensation Commission, in Little Rock.

Bunker- H009567

Again, there was no response from the Claimant in this regard. However, the Postal Service returned the aforementioned Hearing Notice to the Commission on August 10, 2021. It was marked "Return to Sender 'Unclaimed' Unable to Forward."

A hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant did not appear at the hearing. However, the Respondents appeared through their attorney.

Counsel renewed their motion for dismissal due to a lack of prosecution. Specifically, counsel noted that since the filing of the Form AR-C, the Claimant has not made a request for a hearing, or in any manner attempted to resolve her claim. As such, counsel essentially asked that this claim be dismissed pursuant to the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012) and Arkansas Workers' Compensation Commission Rule 099.13.

A review of the evidence shows that the Claimant has had ample time to pursue her claim for workers' compensation benefits, but she has failed to do so. Specifically, the Claimant has not requested a hearing or otherwise attempted to prosecute her claim since the filing of Form AR-C, which was done approximately nine months ago. Furthermore, the Claimant has not objected to the dismissal of her claim for workers' compensation benefits.

After consideration of the evidence presented, I find that the Respondents' Motion to Dismiss for Failure to Prosecute to be well founded. Thus, I further find that pursuant to Ark. Code Ann. §11-9-702 (Repl. 2012) and Commission Rule 099.13, the within claim for workers' compensation benefits should be dismissed without prejudice to the refiling within the specified 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(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 November 23, 2020, requesting both initial and additional workers' compensation benefits. She alleged an injury date of November 3, 2020 due to having tested positive for COVID-19.
3. Subsequently, on December 18, 2020 the Respondents filed a Form AR-2, wherein they accepted the claim as compensable.
4. The Claimant has not requested a hearing since the filing of the Form AR-C, which was done in November 2020-approximately nine months ago.
5. On June 17, 2021, the Respondents filed with the Commission, a Motion to Dismiss for Failure to Prosecute.

6. The Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no bona fide action has been taken by the Claimant in furtherance of her claim, as she has failed to prosecute the within claim.
7. Appropriate Notice of this hearing was tried on all parties to their last known address, in the manner prescribed by law.
8. The Claimant failed to appear at the hearing to object to the Respondents' motion for dismissal.
9. That the Respondents' Motion to Dismiss for Failure to Prosecute is hereby granted pursuant to Ark. Code Ann. §11-9-702, and Commission Rule 099.13, to the refiling of the claim within the specified time 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. As such, the Respondent's Motion to Dismiss for Failure to Prosecute is hereby granted.

This dismissal is pursuant to the provisions of Ark. Code Ann. §11-9-702 and Commission Rule 099.13, without prejudice to the refiling of this claim within the applicable time period.

IT IS SO ORDERED.

CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE

Bunker- H009567

