

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G908007

DORI B. BURCHETT, EMPLOYEE

CLAIMANT

MCNEW FABRICATION, INC., EMPLOYER

RESPONDENT

**NATIONAL AMERICAN INSURANCE CO./SEDGWICK
CLAIMS MANAGEMENT SERVICES, INC., CARRIER/TPA**

RESPONDENT

OPINION FILED MAY 3, 2021

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

Claimant, Ms. Dori B. Burchett, *pro se*, appeared at the hearing.

Respondents were represented by Mr. Zachary Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on April 6, 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 April 6, 2021, hearing and the documents contained therein. The remainder of the Commission's file, which includes the transcript from a previous dismissal hearing on February 18, 2020, has also been made a part of the record. It is hereby incorporated herein by reference.

DISCUSSION

On November 20, 2019, Claimant allegedly suffered a mental breakdown and began experiencing depression and anxiety as a result of bullying while working for Respondent-Employer. On December 10, 2019, Claimant filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of November 20, 2019, and asserted her entitlement to all potential workers' compensation benefits. In the Form AR-C, Claimant's cause of injury was described as:

Mentally broken down, severely depressed, cannot function outside of my home. Live in fear of my life since Jeff McNew threatened to kill me. Super high anxiety zero concentration. Just the thought of being killed has done a number on me. Cannot sleep at all heart constantly racing. Being bullied, manipulated, cussed out constantly. Stalking my cell phone. Fear of walking to my mailbox. Since all this I constantly shake now, every little thing scares me. Please help me.

Respondent-Insurance-Carrier filed a Form AR-2 with the Commission on December 27, 2019. The carrier controverted the claim in its entirety, asserting that there was no accident and no physical injury.

Subsequently, there was no action taken by Claimant to prosecute her claim after the filing of the Form AR-C on December 10, 2019.

On June 26, 2020, Respondents filed a Motion to Dismiss requesting dismissal for failure to prosecute. The Motion was held in abeyance to allow Claimant time to hire an attorney. After several extensions of time were granted for Claimant, a hearing on the Motion to Dismiss was held on December 18, 2020. On that same date, an opinion denying the Motion to Dismiss and a Pre-Hearing Questionnaire Notice were sent to the parties.

There was no response from Claimant regarding this correspondence, and the case was returned to the Commission's general files.

On February 9, 2021, Respondents filed a subsequent Motion to Dismiss for lack of prosecution, with a copy of the correspondence provided to Claimant. On February 12, 2021, the Commission sent a Notice to Claimant advising her of Respondents' request for dismissal and a deadline for filing a written response.

Pursuant to a Hearing Notice dated March 9, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents' request for dismissal for lack of prosecution. Said hearing was scheduled for April 6, 2021, at 12:30 p.m., at the Arkansas Workers' Compensation Commission, Hearing Room "B," Third Floor, 324 S. Spring Street, Little Rock, Arkansas. United States Postal Service records indicated that the Hearing Notice, sent via First-Class Mail and Certified Mail to Claimant's address, was delivered on March 11, 2021, at 10:03 a.m., and a signature was obtained. There was no other response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents' request for dismissal. At the time of the hearing, Claimant appeared without legal counsel. Claimant testified that she had not received the Pre-Hearing Questionnaire; however, she was ready to proceed with her claim. As such, she objected to the request for dismissal. Respondents appeared through their attorney and asked that the claim be dismissed for failure to prosecute.

With respect to the Motion to Dismiss for a lack of prosecution, I find that Respondents' Motion should be respectfully denied at this time based on Claimant's appearance at the hearing, wherein she objected to her claim being dismissed.

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. On November 20, 2019, Claimant allegedly suffered a mental breakdown and began experiencing symptoms of depression and anxiety as a result of bullying while working for Respondent-Employer.
3. On December 10, 2019, Claimant filed a Form AR-C with the Commission seeking benefits in this matter.
4. On December 27, 2019, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission. The carrier controverted the claim in its entirety, asserting that there was no accident and no physical injury.
5. On June 26, 2020, Respondents filed a Motion to Dismiss requesting dismissal for failure to prosecute. A hearing on the Motion to Dismiss was held on December 18, 2020, and an opinion denying the Motion was entered that same date.
6. Subsequently, Claimant did not request a hearing on her claim for workers' compensation benefits.
7. On February 9, 2021, Respondents filed a subsequent Motion to Dismiss for lack of prosecution.
8. Claimant has objected to the dismissal of her workers' compensation claim.
9. Respondents' Motion to Dismiss for lack of prosecution should be, and is respectfully, denied. The matter will be set for a prehearing telephone conference in preparation for a full hearing.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to deny the request for dismissal of this claim for workers' compensation benefits, arising out of Claimant's alleged November 20, 2019, injury.

IT IS SO ORDERED.

**KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE**