

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H009570

JEREMY D. BURNS, EMPLOYEE

CLAIMANT

**STRONG MANUFACTURING COMPANY,
INC., EMPLOYER**

RESPONDENT

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

RESPONDENT

OPINION FILED JANUARY 18, 2022

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Pine Bluff, Jefferson County, Arkansas.

Claimant was represented by Mr. Mark Peoples, Attorney at Law, Little Rock, Arkansas, and Mr. J.R. Baber, Attorney at Law, Fayetteville, Arkansas. Claimant was not present at the hearing, and Claimant's attorneys waived their appearance 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 January 13, 2022, 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.

The record consists of the transcript of the January 13, 2022, 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 by reference.

DISCUSSION

On November 23, 2020, Claimant filed a Form AR-C with the Commission alleging his entitlement to workers' compensation benefits. Per this form, Claimant alleged that he sustained injuries to his back on November 6, 2020, while working for Respondent-Employer.

On December 1, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission, denying the claim in its entirety based on a positive drug test (marijuana).

A Prehearing Telephone Conference was held on March 2, 2021, and pursuant to a March 3, 2021, Prehearing Order, the claim was set for a full hearing on April 15, 2021. However, pursuant to e-mail communication from Claimant's attorneys dated March 17, 2021, Claimant requested a continuance in the matter. There was no objection by opposing counsel, and the request was granted by the Commission on that same date. The hearing was cancelled, and the file was returned to the Commission's general files. No subsequent request for a hearing was made in the matter.

Thereafter, on December 2, 2021, Respondents filed a Motion to Dismiss for failure to prosecute under the provisions of Ark. Code Ann. § 11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13. On December 2, 2021, Claimant's counsel responded via e-mail to the Commission stating that Claimant and his attorneys did not oppose the granting of the motion to dismiss the claim. A subsequent e-mail to the Commission dated December 6, 2021, stated that Claimant's attorneys waived their appearance at the hearing.

Pursuant to a Hearing Notice dated December 7, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for January 13, 2022, at 10:30 a.m., at the Federal Building (Post Office Building), Room 3611, 100 East 8th Street, Pine Bluff, Arkansas.

A hearing was in fact conducted as scheduled on Respondents' request for dismissal. Respondents appeared through their attorney; however, Claimant's attorneys waived their appearance, stating previously that Claimant had no objection to the motion to dismiss. At the hearing, Respondents' counsel advised that, although a hearing was requested by Claimant in March of 2021, Claimant requested that the hearing be cancelled and that the claim be returned to the Commission's general files. Claimant had not requested a hearing or taken any further action in the matter after the original full hearing was cancelled on March 17, 2021. Respondents' counsel noted that Claimant did not object to the dismissal of the claim, and as such, counsel requested that the claim be dismissed, without prejudice, pursuant to Ark. Code Ann. § 11-9-702 and our Rule 099.13.

A review of the evidence shows that Claimant has had sufficient time to pursue his claim for workers' compensation benefits. Here, the alleged work-related injury occurred on November 6, 2020. On December 1, 2020, Respondents denied the claim in its entirety. A Prehearing Order was filed on March 3, 2021, setting the matter for a full hearing on April 15, 2021. However, Claimant requested that the hearing be cancelled and that the matter be returned to the Commission's general files. Respondents filed a motion to dismiss on December 2, 2021, and Claimant's attorneys responded that there was no objection to a dismissal of the claim. Therefore, a hearing was conducted on Respondents' Motion to Dismiss.

Therefore, after consideration of the evidence presented, I find Respondents' Motion to Dismiss this claim to be well supported. Furthermore, I find that pursuant to Commission Rule 099.13, this claim for benefits should be dismissed for failure to prosecute. The dismissal is without prejudice.

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 November 23, 2020, Claimant filed a Form AR-C with the Commission alleging that on November 6, 2020, he sustained an injury to his back while working for Respondent-Employer and asserting his entitlement to workers' compensation benefits.
3. On December 1, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission, denying the claim in its entirety.
4. The matter was set for a full hearing on April 15, 2021. However, at Claimant's request, a continuance was granted, and the matter was returned to the Commission's general files.
5. On December 2, 2021, Respondents filed a Motion to Dismiss for failure to prosecute.
6. On December 2, 2021, Claimant's counsel informed the Commission via electronic mail that Claimant and his attorneys did not oppose the granting of the motion to dismiss the claim and waived their appearance at the hearing.
7. Claimant has had sufficient time to pursue his claim for workers' compensation benefits. Here, the alleged work-related injury occurred on November 6, 2020. On December 1, 2020, Respondents denied the claim in its entirety. A Prehearing Order was filed on March 3, 2021, setting the matter for a full hearing on April 15, 2021. However, Claimant requested that the hearing be cancelled and that the matter be returned to the Commission's general files. Respondents filed a motion to dismiss on December 2, 2021. Claimant's attorneys responded that there was no objection to a dismissal of the claim. Therefore, a hearing was conducted on Respondents' Motion to Dismiss. Respondents' attorney was present, and Claimant's attorneys waived their appearance. To date, Claimant has failed to prosecute his workers' compensation claim.
8. Respondents' request for a dismissal, without prejudice, is well founded.

9. Respondents' request for dismissal should be granted pursuant to Commission Rule 099.13 for failure to prosecute. The dismissal is without prejudice.
10. The application of Ark. Code Ann. § 11-9-702(d) (Repl. 2012) is moot and will not be addressed.
11. Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed pursuant to Commission Rule 099.13 for failure to prosecute. This dismissal is without prejudice.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE