

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H010682

MELANIE BURNS,
EMPLOYEE CLAIMANT

WRIGHT'S FOODS CENTER, INC.,
EMPLOYER RESPONDENT

ACADIA INSURANCE COMPANY,
INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED OCTOBER 14, 2021

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

Claimant, pro se, failed to appear at the hearing.

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

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for want of prosecution, on October 13, 2021, in this claim for workers' compensation benefits pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Here, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the hearing transcript of the October 13, 2021. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference. Respondents offered into evidence one exhibit, a Respondents' Hearing Exhibit Index, consisting of nine (9) numbered pages. Said exhibit has been marked as Respondents' Exhibit 1.

No testimony was taken at the hearing.

DISCUSSION

The Claimant's previous attorney filed a Form AR-C with the Commission on December 21, 2020 in the above-styled claim. Per this document, the Claimant asserted her entitlement to both initial and additional workers' compensation benefits. Her alleged work-related incident occurred on November 5, 2020. Counsel for the Claimant briefly described the cause of injury and the part of body injured as follows: "Claimant slipped and fell while in the course and scope of employ [sic] Claimant sustained injuries to her head and other whole body."

On or about December 29, 2020, the Respondents filed a Form AR-2 with the Commission controverting this claim. Specifically, the Respondents wrote: "Respondents are denying claim suffered a compensable injury."

Since the filing of the Form AR-C, the Claimant has failed to request a hearing on the merits before the Commission in this matter.

However, on June 25, 2021, the Claimant's attorney filed a motion to withdraw as the Claimant's attorney in this workers' compensation claim. On July 14, 2021, the Full Commission entered an order granting the motion. Meanwhile, the Claimant has continued to failed to prosecute or otherwise pursue her claim.

Therefore, on July 20, 2021, the Respondents filed a "Motion to Dismiss for Failure to Prosecute," with a Certificate of Service to the Claimant.

On July 22, 2021, the Commission sent a notice to the Claimant notifying her of the motion with a deadline for filing a written objection. Information received by the Commission from the United States Postal Service shows that this item was delivered to the Claimant's last known address with the Commission on September 6, 2021. The delivery receipt bears Claimant's signature. However, still there was no response from the Claimant regarding this notice.

Subsequently, on August 13, 2021, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for Wednesday, at 11:30 a.m., on October 13, 2021, on the Respondents' motion to dismiss.

Still, there was no response from the Claimant regarding this hearing notice. However, information received by the Commission from the United States Postal Service shows that they were unable to find any delivery information on this item as of September 22, 2021. However, still there was no response from the Claimant about this notice.

A hearing was conducted before the Commission, on the Respondents' motion to dismiss as scheduled. During the hearing, counsel for the Respondents moved that the claim be dismissed due to a lack of prosecution under the provisions of Ark. Code Ann. §11-9-702 and Rule 099.13.

My review of the record shows that more than six (6) months have passed subsequent to the filing of the Form AR-C for a claim of workers' compensation benefits. However, since that time the Claimant has failed to make a bona fide request for a hearing with respect to her claim for workers' compensation benefits. Hence, no action whatsoever has been taken by the Claimant to resolve or pursue her claim. Moreover, despite being given proper notice of the dismissal hearing in the manner prescribed under the law, the Claimant failed to appear at the hearing to object to the dismissal.

Under these circumstances, I am persuaded that the Claimant has had ample time to pursue her claim for benefits; but she has failed to do so. Therefore, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motion to dismiss the within claim should be granted pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13. Accordingly, this claim is hereby dismissed without prejudice, to the refiling of it within the limitation period specified by law.

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 for workers' compensation benefits with the Commission on December 21, 2020, alleging that she sustained a work-related injury in the course and scope of her employment with the respondent-employer on November 5, 2020.
3. Since this time, the Claimant has failed to request a hearing on the merits or otherwise tried to resolve her claim for workers' compensation benefits.
4. On July 20, 2021, the Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute in this matter.
5. After notice of hearing was given to the parties in the manner as prescribed by law, a hearing was held on the Respondents' motion to dismiss. However, the Claimant failed to appear at the hearing to object to her claim being dismissed and she has not responded to the written Notices of this Commission.
6. More than six (6) months have passed since the filing of the claim and no bona fide request for a hearing has been made.
7. The evidence preponderates that the dismissal for want of prosecution is warranted.
8. Notice of the hearing was attempted on all the parties in the manner prescribed by law.
9. That the Respondents' motion to dismiss is hereby granted pursuant to the provisions of Ark. Code Ann. §11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period.

Order

Based on the foregoing Findings of Fact and Conclusions of Law, I find that pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13, this claim is hereby dismissed without prejudice, to

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the refiling within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge