

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: H301373

TAYLOR N. BUTLER, EMPLOYEE	CLAIMANT
AMAZON.COM SERVICES, LLC, EMPLOYER	RESPONDENT
AMERICAN ZURICH INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., THIRD PARTY ADMINISTRATOR (TPA)	RESPONDENT

OPINION FILED JANUARY 30, 2024

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

The Claimant, pro se, did not appear at the hearing.

Respondents represented by the Honorable Rick Behring, Jr., Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

This matter comes before the Commission pursuant to the Motion to Dismiss filed by Respondents. A hearing on the motion was conducted on November 15, 2023, in Little Rock, Arkansas. Thus, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to prosecute it under Ark. Code Ann. §11-9-702 (a)(4), §11-9-702 (d) (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

The Claimant, per my review of Commission records is pro se, failed to appear at the hearing. The record consists of the November 15, 2023, hearing transcript. Admitted into evidence was Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim, consisting

of fourteen numbered pages. Additionally, in order to adequately address this matter under Ark. Code Ann. § 11-9-705(a)(1) (Repl. 2012)(Commission must “conduct the hearing . . . in a manner which best ascertains the rights of the parties”), and without objection, I have blue-backed to the record forms, pleadings, and correspondence from the Commission’s file on the claim, consisting of twenty-six pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, ___ S.W.3d ___, these documents have been served on the parties in conjunction with this opinion.

Reasonable notice of the dismissal hearing was had on all the parties in the manner set by law.

No testimony was taken at the hearing.

Background

The record reflects the following procedural history:

The Claimant’s former attorney filed a Form AR-C with the Commission on February 28, 2023, asserting Claimant’s entitlement to workers’ compensation benefits. Per this document, the Claimant’s attorney described the cause of injury as follows: “Claimant was injured in the course and scope of employment. Claimant sustained injuries to the back and other whole body.” The date of the Claimant’s alleged accidental work-related injury was February 13, 2023. According to this document, the Claimant’s counsel marked all the boxes for both initial and additional workers’ compensation benefits. Yet, at that time, there was no request for a hearing made by the Claimant’s attorney.

On or about April 4, 2023, the Respondents filed a Form AR-2 with the Commission accepting limited liability in this claim. Specifically, the claims adjuster stated that this was a “medical only” claim.

The Claimant's former attorney requested to withdraw as counsel of record for the Claimant in this matter on April 20, 2023. The Full Commission entered an order on May 2, 2023, granting the Claimant's attorney motion to withdraw from representing the Claimant in this workers' compensation claim.

Still, the Claimant has not attempted to pursue or otherwise resolve this claim for workers' compensation benefits since the filing of the Form AR-C in February 2023.

On February 11, 2023, the Respondents filed a Motion to Dismiss and Incorporated Brief in Support with the Commission accompanied by a certificate of service to the Claimant indicating that they served a copy of the pleading on the Claimant by depositing a copy thereof in the United States Mail.

The Commission sent a letter advising the Claimant of the Respondents' motion on September 12, 2023, which was certified mail and first-class mail. Per this letter, the Claimant was given twenty (20) days from the date of that letter to file a response to the motion.

The letter mailed to the Claimant by first class mail has not been returned to the Commission. However, the letter mailed to the Claimant by certified mail was returned to the Commission marked as "RETURN TO SENDER – TEMPORARILY AWAY – RETURN TO SENDER."

Still, to date, there has been no response from the Claimant in this regard.

On October 9, 2023, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for November 15, 2023, on the Respondents' motion to dismiss.

Said notice was mailed to the Claimant by certified and first-class mail.

Tracking information received by the Commission from the United States Postal Service did not show any delivery information on this item. On November 13, 2023, the notice sent by

certified mail to the Claimant was returned to the Commission because they were unable to deliver it to the Claimant. However, the letter mailed to the Claimant via first-class mail has not been returned to the Commission.

Still, there was no response from the Claimant.

However, a hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. The Claimant failed to appear at the hearing to object to the claim being dismissed. Nevertheless, the Respondents' attorney asked that the claim be dismissed under Ark. Code Ann. §11-9-702 (a)(4), §11-9-702 (d), and Commission Rule 099.13 due to the Claimant's failure to prosecute said claim for workers' compensation benefits.

Review of the evidence shows that the Claimant has failed to respond to the written notices of this Commission and did not appear at the hearing to object to the dismissal. Moreover, since the filing of the Form AR-C in February 2023, the Claimant has not requested a hearing. Considering all the foregoing, I am persuaded to conclude that the Claimant has abandoned this claim for workers' compensation benefits.

Accordingly, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motion to dismiss this claim is warranted under the provisions of Ark. Code Ann. §11-9-702 (a)(4), §11-9-702 (d), and Rule 099.13 of this Commission. Said dismissal is *without prejudice*, to the refile of this claim within the limitation period specified by law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the record, 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. Claimant's former attorney filed a Form AR-C with the Commission in this matter asserting the Claimant's entitlement to workers' compensation benefits due to an incident occurring at work on February 13, 2023.
3. Subsequently, the Claimant's attorney filed a motion to be relieved as counsel of record, which was granted by the Full Commission.
4. Since this time, and the filing of the Form AR-C, the Claimant has failed to make a bona fide request for a hearing in this matter.
5. The Respondents filed a Motion to Dismiss this claim in September 2023.
6. Reasonable notice of the Motion to Dismiss and hearing was had on all the parties. The Claimant has failed to respond to the notices of this Commission and did not appear at the hearing to object to this claim being dismissed.
7. The evidence preponderates that the Respondents' motion for dismissal for a lack of prosecution is warranted.
8. That the Respondents' motion to dismiss is hereby granted pursuant to Ark. Code Ann. §11-9-702 (a)(4), §11-9-702 (d), and Rule 099.13 *without prejudice*, to the refiling of the claim within the specified limitation period.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, this claim is hereby dismissed *without prejudice*, pursuant to Ark. Code Ann. §11-9-702 (a)(4), §11-9-702 (d), and Commission Rule 099.13 to the refiling of it within the specified limitation period.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge