

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H205173

MABLE J. BEALER, EMPLOYEE	CLAIMANT
BRIDGE 2 SUCCESS, EMPLOYER	RESPONDENT
CHURCH MUTUAL INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
ESIS, INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED OCTOBER 24, 2023

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

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

Respondents represented by the Honorable Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held on October 17, 2023 in the above-captioned case pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), for a determination of whether this claim for Arkansas workers' compensation benefits should be dismissed due to the Claimant's failure to prosecute it timely 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 attempted on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the October 17, 2023, hearing and the documents contained therein. In addition, the entire Commission's file has been made a part of the record. It

is hereby incorporated herein by reference. The Respondents introduced into evidence an exhibit consisting of thirty-four numbered pages, which has been marked accordingly.

Discussion

On September 9, 2022, the Claimant's attorney filed a Form AR-C with the Commission asserting the Claimant's entitlement to Arkansas workers' compensation benefits. He alleged that the Claimant sustained compensable injuries to her right knee, back, and other body parts on June 23, 2022, while working for the respondent-employer. The Claimant's attorney asserted that she was entitled to both initial and additional workers' compensation benefits. Specifically, counsel checked off all the boxes for every conceivable benefit allowed by law in connection with this claim.

The respondent-insurance carrier filed a Form AR-2 with the Commission on October 11, 2022, controverting the within claim. Specifically, the claims adjuster explicitly wrote on this document, the following: "Denied as there is no evidence of injury. Claim does not meet the requirements for compensability under AR law."

As a result, the prehearing process was started in this matter. On November 16, 2022, a prehearing telephone conference was held on this claim, and on that same day a Prehearing Order was entered wherein the claim for scheduled for a full hearing. The parties agreed to litigate this claim on January 24, 2023.

However, on January 11, 2023, the Claimant's attorney sent an e-mail to the Commission, asking to be relieved as counsel record for the Claimant in this matter. On January 24, 2023, the Claimant's attorney was allowed to withdraw from representing the Claimant. Also, per counsel's correspondence of January 11, he asked that the hearing be removed from the docket, which was done. Hence, the case file was returned to the Commission's general files.

Since this time, the Claimant has taken no action whatsoever to pursue her claim.

Therefore, on August 14, 2023, the Respondents filed a Respondents' Motion to Dismiss the within claim due to a lack of prosecution under Ark. Code Ann. 11-9-702 (a)(4) and Rule 099.13 of this Commission. The Respondents' pleading was accompanied by a certificate of service to the Claimant, which showed they mailed it to her.

The Commission sent a letter to the Claimant giving her twenty days to file a written response to the Respondents' motion for dismissal. This letter-notice was sent to the Claimant by both certified and first-class mail. The information received from the United States Postal Service shows that this item has not been claimed by the Claimant. However, the notice sent by first-class mail has not been returned to the Commission.

Pursuant to a Hearing Notice dated August 31, 2023, the Commission notified the parties that a hearing was scheduled to address the Respondents' motion to dismiss this claim due to a lack of prosecution. Said hearing was scheduled for October 17, 2023, in Little Rock at the Arkansas Workers' Compensation Commission. The notice was sent to the Claimant via certified and first-class mail.

The information received by the Commission from the Postal Service shows that they were unable to find any delivery information in their records for the notice of hearing, which was mailed to the Claimant. However, the notice sent to the Claimant by regular mail has not been returned to the Commission. Based on the foregoing, the Claimant was provided proper notice of the dismissal hearing.

Still, there has been no response from the Claimant. Subsequently, a hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant failed to appear at the dismissal hearing. However, the Respondents appeared through their attorney.

Counsel explicitly noted that the Claimant has failed to promptly prosecute her claim for workers' compensation benefits since her attorney was allowed to withdraw from representing her in this matter, which was done in January 2023. Counsel also noted that he took the Claimant's deposition, but she refused to answer questions about her medical providers. Although the Claimant has not responded to the notices of this Commission, she contacted the Respondents' attorney upon receipt of the motion for dismissal of the claim. However, the Claimant has still failed to object to the dismissal of her claim. Therefore, the Respondents' counsel asked that the claim be dismissed due to a lack of prosecution based on all the foregoing, and reasons stated in his motion and brief.

The record before me proves that the Claimant has failed to promptly prosecute her claim for workers' compensation benefits. Moreover, the Claimant did not appear at the hearing to object to her claim being dismissed, and she has not responded to the notices of this Commission. Under these circumstances, I am compelled to find that the evidence preponderates that the Claimant has abandoned her claim. Accordingly, per Ark. Code Ann. §11-9-702 and Rule 099.13 of this Commission, I find that this claim should be and is hereby respectfully 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 Respondents filed with the Commission a motion for dismissal of this claim due to a lack of prosecution, for which a hearing was held.
3. The Claimant has not made a request for a hearing since her attorney was allowed to withdraw from representing her, which was done more than

some six months ago. Hence, the evidence preponderates that the Claimant failed to prosecute her claim for workers' compensation benefits.

4. Appropriate Notice of the dismissal hearing was tried on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' Motion to Dismiss this claim for a lack of prosecution is hereby granted, *without prejudice*, pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER

In accordance with the findings set forth above, this claim is hereby dismissed pursuant to Ark. Code Ann. §11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13, *without prejudice*, to the refiling of it, within the limitation period specified by law.

IT IS SO ORDERED.

HON. CHANDRA L. BLACK
Administrative Law Judge