

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H104907

CEDRIC BENNETT, EMPLOYEE

CLAIMANT

PINE BLUFF SCHOOL DISTRICT, EMPLOYER

RESPONDENT

**ARKANSAS SCHOOL BOARDS ASSOCIATION,
CARRIER/TPA**

RESPONDENT

OPINION FILED SEPTEMBER 8, 2022

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

Claimant, Mr. Cedric Bennett, *pro se*, failed to appear at the hearing.

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

STATEMENT OF THE CASE

A hearing was held on August 31, 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 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 August 31, 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. Respondents submitted one exhibit packet, which was labeled as Respondents' Exhibit No. 1 and admitted into evidence. The packet contained the following documents: Form AR-N; benefits printout; Form AR-2; Form AR-C; Order to Withdraw; Motion to Dismiss; Correspondence to the Claimant; and the Hearing Notice on the Motion to Dismiss.

DISCUSSION

The Claimant alleged that he sustained injuries to multiple body parts on June 2, 2021, while working for the Respondent-Employer.

On June 16, 2021, Respondents filed a Form AR-2 with the Commission accepting the claim as compensable and paying some benefits.

On July 29, 2021, Claimant's attorney of record at the time filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of June 2, 2021, and asserted his entitlement to initial and additional workers' compensation benefits.

On April 26, 2022, Respondent/Misty Thompson, Workers' Compensation Claims Adjuster, filed with the Commission a letter motion to dismiss for lack of prosecution. On May 2, 2022, by way of a letter from his attorney of record at the time, Claimant objected to the dismissal. Thereafter, the prehearing process was initiated. Respondents filed their Response to Prehearing Questionnaire on May 19, 2022; however, no Prehearing Questionnaire Response was filed by the Claimant.

Thereafter, on June 3, 2022, Claimant's attorney of record at the time filed a motion to withdraw as counsel. Communication from Claimant's attorney indicated that he was unable to effectively communicate with the Claimant, and therefore unable to effectively represent his client. The request to withdraw from representation was granted on July 6, 2022.

Also, on July 6, 2022, Respondents, through their attorney of record, filed a Motion to Dismiss for failure to prosecute. On July 7, 2022, the Commission sent a Notice to Claimant advising him of Respondents' Motion and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated July 28, 2022, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss. Said hearing was scheduled for August 31, 2022, at 12:00 p.m., at the Federal Building (Post Office Building), Room 3611, 100 East 8th Street, Pine Bluff, Arkansas. The Hearing Notice was sent to Claimant via Certified Mail – Return Receipt Requested – and First-Class Mail. There was no response from the Claimant regarding the hearing notice.

Therefore, a hearing was in fact conducted as scheduled on Respondents' Motion to Dismiss for failure to prosecute. Respondents appeared through their attorney. The Claimant failed to appear at the hearing.

Counsel advised that Respondents had accepted the claim as compensable and that Claimant had undergone medical treatment for his injuries. Counsel also advised that a Form AR-C was filed on July 29, 2021, by Claimant's prior attorney of record. However, Claimant's attorney was subsequently allowed to withdraw from representing the Claimant. In sum, the Claimant had not taken further action in the matter and had not sought any type of *bona fide* hearing before the Workers' Compensation Commission since his objection on May 2, 2022, to the first Motion to Dismiss filed by the Respondent (Misty Thompson, Adjuster). 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 Claimant's alleged work-related injury occurred on June 6, 2021, for which he filed a Form AR-C on July 29, 2021, with the Commission. Following Respondents' Motion to Dismiss, the Claimant objected to a dismissal, and the Prehearing process

was initiated. The Claimant, however, failed to submit a Response to the Prehearing Questionnaire. Thereafter, on July 6, 2022, his attorney's motion to withdraw was granted. There has been no response from the Claimant since that time, and the Claimant did not appear at the dismissal hearing.

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. Claimant alleged that he sustained injuries to multiple body parts on June 2, 2021, while working for the Respondent-Employer.
3. On June 16, 2021, Respondents filed a Form AR-2 with the Commission accepting the claim as compensable and paying some benefits.
4. On July 29, 2021, Claimant's previous counsel filed a Form AR-C with the Commission, asserting his entitlement to initial and additional workers' compensation benefits.
5. On April 26, 2022, Respondent/Misty Thompson, Workers' Compensation Claims Adjuster, filed with the Commission a letter motion to dismiss for lack of prosecution, to which the Claimant objected.
6. On May 19, 2022, Respondents filed a Response to the Commission's Prehearing Questionnaire; however, no Prehearing Questionnaire Response was received from the Claimant.

7. On June 3, 2022, Claimant’s attorney of record at the time filed a motion to withdraw as counsel, which was granted on July 6, 2022.
8. Also on July 6, 2022, Respondents, through their attorney of record, filed a Motion to Dismiss for failure to prosecute.
9. The Claimant has had sufficient time to pursue his claim for workers’ compensation benefits. Here, Claimant’s alleged work-related injury occurred on June 2, 2021, for which he filed a Form AR-C on July 29, 2021, with the Commission. The Claimant objected to Respondents’ letter Motion to Dismiss (filed by Misty Thompson); however, the Claimant subsequently failed to file a Response to the Prehearing Questionnaire. Thereafter, Claimant’s attorney was allowed to withdraw from representation, and to date, Claimant has failed to prosecute his claim for workers’ compensation benefits.
10. Respondents’ Motion to Dismiss for failure to prosecute is well founded.
11. Respondents’ Motion to Dismiss for failure to prosecute should be granted pursuant to Commission Rule 099.13 for failure to prosecute. This dismissal is without prejudice.
12. Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, 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