

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: H204853

JUSTIN CALLOWAY, EMPLOYEE	CLAIMANT
CLEAN HARBORS ENVIRONMENTAL SERVICES, INC., EMPLOYER	RESPONDENT
INDEMITY INSURANCE COMPANY OF NORTH AMERICA (PA), INSURANCE CARRIER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., THIRD PARTY ADMINISTRATOR (TPA)	RESPONDENT

OPINION FILED JULY 23, 2024

Hearing held before Administrative Law Judge Chandra L. Black, in El Dorado, Union 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 Respondents' motion for dismissal was conducted on July 17, 2024, in El Dorado, Arkansas.

Thus, the sole issue for determination to be addressed at the hearing was 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 record consists of the July 17, 2024, hearing transcript and the documentary evidence held therein. Specifically, admitted into evidence was Commission’s Exhibit 1, which consists of five (5) pages; and Respondents’ Exhibit 1, comprising of pleadings, correspondence and forms related to this claim, consisting of fourteen numbered pages.

No testimony was taken at the hearing.

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

Discussion

The record reflects the following procedural history:

The Claimant’s former attorney filed a Form AR-C with the Commission on July 6, 2022, asserting Claimant’s entitlement to Arkansas workers’ compensation benefits. Per this document, the Claimant’s attorney described the cause of injury as follows: “Claimant sustained injuries to multiple body parts including not necessarily limited to his back, lumbar spine and thoracic spine including neuropathy.” His accidental work-related injury occurred on June 17, 2022. According to this document, the Claimant’s counsel checked off 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 July 28, 2022, the Respondents filed a Form AR-2 with the Commission accepting liability for the Claimant’s back injury in this claim. Specifically, per this document, the claims adjuster stated that the first date that payment for indemnity benefits was triggered on July 7, 2022.

The Claimant’s former attorney requested to withdraw as counsel of record for the Claimant in this matter on September 15, 2023. The Full Commission entered an order on

September 26, 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 his claim for workers’ compensation benefits since the filing of the Form AR-C on July 6, 2022.

On February 1, 2024, the Respondents filed a Motion to Dismiss and Incorporated Brief in Support which was accompanied by a certificate of service to the Claimant. According to this certification, the Respondents’ attorney served a copy of the aforementioned pleading on the Claimant by depositing a copy thereof in the United States Mail.

The Commission sent a letter advising the Claimant notifying him of the Respondents’ motion on May 9, 2024. Said letter was sent via certified mail and first-class mail. Per this letter, the Claimant was given twenty (20) days from the date of the letter to file a written response to the motion.

The above 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 – Unclaimed – Unable to Forward.”

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

On February 15, 2024, the Respondents’ attorney requested that his dismissal request be held in abeyance, pending the resolution of an outstanding issue of payment for the Claimant’s permanent partial disability benefits. Said request for holding the motion for dismissal in abeyance was granted. However, on May 9, 2024, the Respondents’ attorney renewed his motion to dismiss.

Therefore, on May 30, 2024, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled on the Respondents’ motion to dismiss. The hearing was set for Wednesday, July 17, 2024, in El Dorado, Arkansas.

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

Tracking information received by the Commission from the United States Postal Service shows they were unable to deliver this item to the Claimant. However, the letter mailed to the Claimant via first-class mail has not been returned to the Commission.

Still, there has been 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 moved 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 his claim. Counsel for the Respondents also indicated that all appropriate benefits have been paid and the Claimant has returned to work for the respondent-employer.

Adjudication

The statutory provisions and Arkansas Workers' Compensation Rule applicable in the motion for dismissal of these claims due to a lack of prosecution are outlined below:

Specifically, Ark. Code Ann. §11-9-702(a)(4) provides:

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within the limitation periods specified in subdivisions (a)(1)-(3) of this section.

Additionally, Ark. Code Ann. §11-9-702(d) provides:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

Commission Rule 099.13 reads:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

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 more than six months ago after the filing of the claim, which was done in July 2022, the Claimant has not requested a hearing.

Considering all the foregoing, I am compelled to conclude that the Claimant has abandoned his 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 June 17, 2022.
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 and Incorporated Brief in Support with the Commission on February 1, 2024.
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 his claim being dismissed.
7. The evidence preponderates that the Respondents' motion to dismiss this claim 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