

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G901404

JEANETTE CARTWRIGHT, EMPLOYEE

CLAIMANT

WATSON CHAPEL SCHOOL DISTRICT, EMPLOYER

RESPONDENT

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

RESPONDENT

OPINION FILED OCTOBER 29, 2021

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

Claimant was represented by Ms. Sheila Campbell, Attorney at Law, North Little Rock, Arkansas. Ms. Carmen Pruitt, Attorney at Law, North Little Rock, Arkansas, appeared at the hearing on Claimant's behalf. Claimant did not 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 October 14, 2021, 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 (Repl. 2012) 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 October 14, 2021, 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' exhibit packet was marked as Respondents' Exhibit 1 and was made a part of the record. The packet consisted of the First Report of Injury;

the Form AR-2; the Amended Form AR-2; the May 28, 2019, Form AR-C; the November 2, 2020, Form AR-C; the Motion for Continuance; and the e-mail correspondence between the attorneys and the Commission dated October 8, 2021.

DISCUSSION

Claimant alleged that she sustained injuries to her left knee on February 25, 2019, while working for Respondent-Employer.

On May 2, 2019, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission, denying the claim in its entirety as the alleged injury occurred outside the course and scope of employment.

On May 28, 2019, Claimant filed a Form AR-C with the Commission for both initial and additional workers' compensation benefits. Per this form, Claimant alleged that she sustained injuries to her left knee on February 25, 2019, while working for Respondent-Employer. Specifically, the following description was stated for Claimant's accidental injury: "Claimant is a bus driver and as she exited the bus, she slipped and fell and injured her left knee. Claimant had previously had surgery to the knee that was injured on 02/25/19 when she exited the bus."

On December 13, 2019, Respondents filed a Motion to Dismiss for failure to prosecute. When there was no response from Claimant, the claim was dismissed under the provisions of Rule 009.13 of the Arkansas Workers' compensation Commission, without prejudice, on January 22, 2020.

On November 2, 2020, Claimant re-filed a Form AR-C with the Commission requesting both initial and additional workers' compensation benefits. Per this form, Claimant set forth the same allegations regarding an injury to her left knee.

On May 18, 2021, Respondents filed a Motion to Dismiss for failure to prosecute under the provisions of Ark. Code Ann. § 11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13. On May 20, 2021, the Commission sent a Notice to Claimant's counsel and Claimant, advising them of Respondents' Motion to Dismiss and a deadline for filing a written response. Claimant's counsel responded via letter to the Commission, requesting a hearing in the matter. Thus, an Order was entered by the Commission on June 7, 2021, holding Respondents' Motion to Dismiss in abeyance and setting forth deadlines for prehearing questionnaire responses.

On June 8, 2021, Claimant filed a formal Response to Motion to Dismiss for Failure to Prosecute, requesting a hearing on the merits of her claim.

A prehearing telephone conference was held in the matter on August 3, 2021, and a Prehearing Order was entered on August 4, 2021. Pursuant to the Prehearing Order, the matter was set for a full hearing on October 14, 2021, at 10:30 a.m. in the Federal Building (Post Office Building), Room 3611, 100 East 8th Street, Pine Bluff, Arkansas.

On October 8, 2021, Claimant filed a Motion for Continuance of the hearing in the matter. There was no objection from Respondents. However, following electronic communication dated October 8, 2021, from Claimant's counsel informing the Commission that Claimant had agreed to a dismissal without prejudice, the full hearing scheduled for October 14, 2021, in Pine Bluff, Arkansas, was rescheduled as a hearing on Respondents' Motion to Dismiss, also set on October 14, 2021, at 10:30 a.m. in Pine Bluff, Arkansas. Pursuant to a letter sent by the Commission on October 8, 2021, the parties were advised that the full hearing was cancelled and rescheduled as a dismissal hearing to be held at the same date, time, and location as the full hearing.

Therefore, a hearing was in fact conducted as scheduled on Respondents' Motion to Dismiss. Respondents appeared through their attorney. Claimant's counsel appeared on

Claimant's behalf. At the hearing, Respondents' attorney requested that the claim be dismissed, without prejudice, pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13. Claimant's attorney was present and confirmed that Claimant had no objection to a dismissal, without prejudice.

A review of the evidence shows that Claimant has had sufficient time to pursue her claim for workers' compensation benefits. Here, the alleged work-related injury occurred on February 25, 2019. On May 2, 2019, Respondents denied the claim in its entirety and subsequently filed a Motion to Dismiss on May 18, 2019. Claimant's Form AR-C was filed on May 28, 2019. Pursuant to an Order entered by the Commission on January 22, 2020, the claim was dismissed pursuant to Commission Rule 099.13, without prejudice. Claimant re-filed a Form AR-C on November 2, 2020. Thereafter, the matter was scheduled for a full hearing. However, prior to the hearing date, Claimant filed a Motion for Continuance of the hearing and subsequently informed the Commission that she did not object to a dismissal of the claim, without prejudice. Therefore, a hearing was conducted on Respondents' Motion to Dismiss. Respondents' attorney was present. Claimant's attorney appeared on Claimant's behalf and confirmed that Claimant did not object to a dismissal, without prejudice.

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. On May 2, 2019, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying the claim in its entirety.
3. On May 28, 2019, Claimant filed a Form AR-C with the Commission alleging that on February 25, 2019, she sustained an injury to her left knee while working for Respondent-Employer and requesting both initial and additional benefits.
4. On December 13, 2019, Respondents filed a Motion to Dismiss for failure to prosecute. When there was no response from Claimant, the claim was dismissed under the provisions of Rule 099.13 of the Arkansas Workers' compensation Commission, without prejudice, on January 22, 2020.
5. On November 2, 2020, Claimant re-filed a Form AR-C with the Commission alleging that on February 25, 2019, she sustained an injury to her left knee while working for Respondent-Employer and requesting both initial and additional workers' compensation benefits.
6. On May 18, 2021, Respondents filed a Motion to Dismiss for failure to prosecute.
7. On June 7, 2021, an Order was entered by the Commission holding Respondents' Motion to Dismiss in abeyance and setting forth deadlines for filing prehearing questionnaire responses.
8. On June 8, 2021, Claimant filed a Response to Motion to Dismiss for Failure to Prosecute, requesting a hearing on the merits of her claim.
9. Pursuant to a Prehearing Order entered on August 4, 2021, the matter was set for a full hearing on October 14, 2021, at 10:30 a.m. in the Federal Building (Post Office Building), Room 3611, 100 East 8th Street, Pine Bluff, Arkansas.
10. On October 8, 2021, Claimant filed a Motion for a Continuance in the matter, and there was no objection from Respondents.
11. Pursuant to electronic communication from Claimant's counsel dated October 8, 2021, informing the Commission that Claimant agreed to a dismissal without prejudice, the full hearing scheduled for October 14, 2021, in Pine Bluff, Arkansas, was rescheduled as a hearing on Respondents' Motion to Dismiss, also set on October 14, 2021, at 10:30 a.m. in Pine Bluff, Arkansas.

12. Claimant has had sufficient time to pursue this claim for workers' compensation benefits. Here, the alleged work injury occurred on February 25, 2019. The claim was dismissed, without prejudice, by the Commission on January 22, 2020. Claimant re-filed a Form AR-C on November 2, 2020. The matter was set for a full hearing; however, Claimant requested a continuance of the full hearing, and subsequently informed the Commission she did not object to a dismissal of the claim, without prejudice. Claimant's attorney also appeared at the dismissal hearing and confirmed that Claimant did not object to a dismissal without prejudice. To date, Claimant has failed to prosecute her workers' compensation claim.
13. Respondents' request for a dismissal, without prejudice, is well founded.
14. Respondents' request for dismissal should be granted pursuant to Commission Rule 099.13 for failure to prosecute. The dismissal is without prejudice.
15. The application of Ark. Code Ann. § 11-9-702(d) (Repl. 2012) is moot and will not be addressed.
16. Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, 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