

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H108068

KATHALEEN COLE, EMPLOYEE	CLAIMANT
MALVERN SCHOOL DISTRICT, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOC., WCT., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 29, 2024

Hearing held before Administrative Law Judge Chandra L. Black, in Hot Springs, Garland County, Arkansas.

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

Respondents represented by the Honorable Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

This matter comes before the Commission pursuant to the Motion to Dismiss for Failure to Prosecute filed by the Respondents. A hearing was conducted on the motion for dismissal of this claim on October 25, 2024, in Hot Springs, Arkansas. Thus, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under the relevant provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of October 25, 2024, hearing transcript and exhibits. In that regard, Commission's Exhibit No. 1 includes three actual pages, which has been marked accordingly, and Respondents' Exhibit 1 consisting of fourteen numbered pages was marked as thus so.

No testimony was taken at the hearing.

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

Background

The record reflects the following procedural history:

The Claimant's former attorney filed a Form AR-C, with the Commission on November 1, 2022, alleging that the Claimant sustained an accidental injury on September 8, 2021, while working for the Malvern School District. According to this document, the Claimant allegedly sustained injuries to her head, left knee, left side, left elbow, left hand, and other whole body while working for the respondent-employer. The Claimant's former attorney requested both initial and additional workers' compensation benefits.

The Respondents filed an initial Form AR-2 with the Commission. Subsequently, the Respondents filed an amended Form AR-2 filed on or about October 11, 2021, accepting the claim as being compensable and paid some medical benefits and temporary total disability compensation to and on behalf of the Claimant.

The Claimant's attorney requested to withdraw from representing the Claimant in this matter. On December 6, 2022, the Full Commission entered an order allowing the Claimant's attorney to withdraw from representing the Claimant in this case for workers' compensation benefits.

Since the filing of Form AR-C, the Claimant has failed to pursue her claim for initial and/or additional workers' compensation benefits. Hence, the Claimant failed to make a bona fide request for a hearing on the merits in this matter.

Therefore, the Respondents filed with the Commission on August 30, 2024, a Motion to Dismiss for Failure to Prosecute, along with a Certificate of Service to the Claimant. Of note, on

the Respondents' Hearing Exhibit Index, the motion for dismissal in incorrectly name Motion to *Withdraw*. However, at the beginning of the hearing, the attorney for the Respondents made the handwritten correction on the hearing index for this being a Motion to "*Dismiss*."

On September 3, 2024, my office wrote to the Claimant and requested a response to the motion within twenty days. The letter was sent by first-class and certified mail to the address listed by the Claimant with the Commission.

A dismissal hearing notice was sent to the parties on September 24, 2024, scheduling the hearing for October 25, 2024, at 8:30 a.m. at the Transportation Depot, Hot Springs. Said notice was sent to Claimant by first-class and certified mail to the same address as before. The first-class letter was not returned. Thus, the evidence preponderates that the Claimant received proper notice of the dismissal hearing.

The hearing was in fact held as scheduled. The Claimant did not appear at the hearing. The Respondents' counsel argued that the Claimant has failed to prosecute her claim for workers' compensation benefits. Counsel further noted that the Claimant has not taken any affirmative action to prosecute her claim in more than six (6) months. More specifically, Respondents' counsel noted that the Claimant has not taken any action to advance her claim since the filing of the Form AR-C, which was done more than two (2) years ago.

Therefore, the Respondents' attorney moved that this claim be dismissed pursuant to Ark. Code Ann. §11-9-702, and/or Commission Rule 099.13 *with or without prejudice* on this claim for both initial and additional workers' compensation benefits.

Discussion

The statutory provisions and Arkansas Workers' Compensation Rule applicable in the Respondents' request for dismissal of this claim are outlined below:

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

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 limitation periods specified in subdivisions (a)(1)-(3) of this section.

Moreover, 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)

As the moving party, the Respondents under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012) must prove their entitlement to the relief requested—dismissal of this matter—by a preponderance of the evidence. This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

With respect to the evidence recounted above, (1) the parties were provided reasonable notice of the Motion to Dismiss and the hearing on it; and (2) the Claimant has failed to pursue her claim because she has taken no further action in pursuit of it since the filing of her claim for benefits on November 1, 2022.

Here, the evidence preponderates that the Claimant has failed to prosecute this claim for workers' compensation benefits. Moreover, I am convinced that the Claimant has abandoned considering she has taken no action to object to the motion, and she has failed to respond to the notices of this Commission.

Therefore, after consideration of the evidence before me, I find that the Respondents' motion to dismiss for a lack of prosecution to be well taken. I thus find that pursuant to the pertinent provisions of Ark. Code Ann. §11-9-702, and Commission Rule 099.13, that this claim for workers' compensation benefits should be dismissed *without prejudice* to the refiling within the limitation periods specified under the Arkansas Workers' Compensation Act (the "Act").

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.

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, for which a hearing was held.
3. The Claimant has not requested a hearing since her former attorney filed the Form AR-C, which was done more than two years ago. Hence, the evidence preponderates that the Claimant has failed to prosecute her claim for workers' compensation benefits based upon the relevant statutory provisions of Ark. Code Ann. §11-9-702, and Rule 099.13 of this Commission.

4. Appropriate notice of the dismissal hearing was had 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*, per Ark. Code Ann. §11-9-702, and Commission Rule 099.13, to the refiling of it within the limitation periods specified by law.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim for workers' compensation benefits. This dismissal is per Ark. Code Ann. §11-9-702, and Commission Rule 099.13, *without prejudice* to the refiling of this claim within the limitation periods specified under the Act.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge