

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. H006992 & H006993

DEBARA CRAWFORD,
EMPLOYEE

CLAIMANT

WALMART ASSOCIATES, INC.,
EMPLOYER

RESPONDENT

WALMART CLAIMS SERVICES, INC.,
THIRD PARTY ADMINISTRATOR
(TPA)

RESPONDENT

OPINION FILED JULY 21, 2021

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

Claimant, pro se, not appearing.

Respondents represented by Mr. Curtis L. Nebben, Attorney at Law, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for want of prosecution, on July 14, 2021, in these claims for workers' compensation benefits pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Here, the sole issue for determination is whether these claims should be dismissed due to the Claimant's failure to timely prosecute them under Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

Notice of the hearing was had on the parties in the manner prescribed by law.

The record consists of the hearing transcript of the July 14, 2021. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

No testimony was taken at the hearing.

DISCUSSION

The Claimant's former attorney filed a Form AR-C with the Commission on September 23, 2020. Per this document, the Claimant asserted her entitlement to both initial and additional workers' compensation benefits. The Claimant's alleged that her work-related accident occurred on August 2, 2020. Counsel for the Claimant briefly described the cause of the Claimant's injury and the part of body being injured as follows: "Claimant was picking up a box and hurt back. Claimant sustained injuries to lower back and other whole body."

Also, on September 23, 2020, the Claimant's former attorney filed another Form AR-C with the Commission. Per this document, the Claimant asserted her entitlement to both initial and additional workers' compensation benefits. The Claimant's alleged that her work-related accident occurred on September 12, 2020. Counsel for the Claimant briefly described the cause of the Claimant's injury and the part of body being injured as follows: "Her second injury was described as Claimant has injuries to left elbow and right wrist from repetitive work due to her employment duties."

It appears that on or about September 24, 2020, the Respondents filed a Form AR-2 with the Commission controverting the August 2, 2020 injury. Specifically, the Respondents contended: "Respondents dispute injury arose out of in the course and scope of employment."

On October 1, 2020, the Respondents filed a second Form AR-2 with the Commission controverting the Claimant's alleged injury of September 12, 2020. Specifically, the Respondents stated: "Doctor states there is no evidence of a work injury. No objective findings. The injury did not arise out of in the course of the employment."

However, on October 28, 2020, the Claimant's former attorney filed a motion to withdraw as Claimant's attorney in these claims. The Full Commission entered an order on November 20, 2020, granting the Claimant's attorney motion to withdraw as counsel of record in these workers' compensation claims.

To date, the Claimant has failed to request a hearing on the merits of these claims.

Therefore, on March 23, 2021, the Respondents filed with the Commission a Motion to Dismiss in both claims, with Certificates of Service to the Claimant.

Still, there has been no action taken by the Claimant to pursue his claim.

On March 29, 2021, the Commission sent a notice to the Claimant informing her of the motion, with a deadline of April 19, 2021, for filing a written objection.

There has been no response from the Claimant.

Ultimately, on June 4, 2021, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for July 14, 2021, on the Respondents' motion.

Said hearing was in fact conducted on the Respondents' motions for dismissal as scheduled. During the hearing, counsel for the Respondents moved that the claim be dismissed due to a lack of prosecution.

My review of the record shows that more than six (6) months have passed after the filing of the Form AR-Cs in these claims for workers' compensation benefits. However, since this time, the Claimant has failed to make a request for a hearing with respect to these claims. As such, I am persuaded that the Claimant has had ample time to pursue her claims for workers' compensation benefits but has failed to do so. Furthermore, the Claimant has also failed to respond to the notices of this Commission and has not objected to her claims being dismissed.

Therefore, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motions for dismissal of these claims should be granted pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13. These claims are hereby dismissed without prejudice, to the refiling 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 Claimant's former attorney filed Form AR-Cs with the Commission on September 23, 2020, alleging that Claimant sustained a work-related injury in the course and scope of her employment with the respondent-employer on August 2, 2020 and September 12, 2020.
3. Since this time, the Claimant has failed to request a hearing or otherwise pursue her claims.
4. On March 23, 2021, the Respondents filed with the Commission a motion to dismiss in both claims.
5. The Claimant failed to appear at the hearing and has not objected to these claims being dismissed.
6. The evidence preponderates the Respondents' motions for dismissal due to want of prosecution should be granted.
7. That the Respondents' Motions to Dismiss are hereby granted pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of these claims within the specified limitation period.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, I find that pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13, these claims are hereby dismissed without prejudice, to the refiling within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge