

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. HOO7541

CHRISTY DAVIS,
EMPLOYEE

CLAIMANT

OLDCASTEL LAWN AND GARDEN, INC.,
EMPLOYER

RESPONDENT

LIBERTY MUTUAL INSURANCE COMPANY
INSURANCE CARRIER/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. Jason M. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for want of prosecution, on July 20, 2021, in this claim 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 this claim should be dismissed due to the Claimant's failure to timely prosecute it 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 20, 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 filed a Form AR-C with the Commission on October 8, 2020 alleging an injury while working for the respondent-employer on May 20, 2020. The Claimant stated that he was injured when he tripped over a bag of soil. Per this document, the Claimant asserted her entitlement to both initial and additional workers' compensation benefits. Specifically, the Claimant requested initial medical expense, additional temporary total disability, additional medical expenses, rehabilitation, and attorney fees.

It appears that on or about October 26, 2020, the Respondents filed a Form AR-2 with the Commission controverting this claim. Specifically, the Respondents stated: "Liberty Mutual Insurance disputes compensability. There is no evidence to support that the employee was not in the course and scope of employment when an alleged injury took place."

The Claimant retained legal counsel. On November 20, 2020, the Claimant's former attorney filed a second Form AR-C in this matter. The Claimant's former attorney alleged an injury date of May 20, 2020. Counsel gave the following description of the alleged incident: "Claimant was in the course and scope of employment when she was picking up a pallet and tripped over a bag on the floor. The Claimant sustained injuries to her right elbow, right arm, and other whole body." Per this document, the Claimant's attorney requested both initial and additional benefits.

Since the filing of the Form AR-Cs, the Claimant has failed to request a hearing on the merits before the Commission.

Therefore, on May 26, 2021, the Respondents filed with the Commission a Respondents' Motion to Dismiss. In that regard, the Respondents requested that this claim be dismissed without

prejudice pursuant to Rule 099.13 of the Arkansas Workers' Compensation Commission for failure to prosecute.

However, on April 29, 2021, the Claimant's former attorney filed a motion to withdraw as Claimant's attorney in this matter. The Full Commission entered an order on May 19, 2021, granting the Claimant's attorney motion to withdraw of as counsel of record in this workers' compensation claim.

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

On May 28, 2021, the Commission sent a notice to the Claimant informing him of the motion, with a deadline of June 18, 2021, for filing a written objection.

There has been no response from the Claimant.

Ultimately, on June 21, 2021, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for July 20, 2021, on the Respondents' motion to dismiss.

Said hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. During the hearing, counsel for the Respondents moved that the claim be dismissed due to a lack of prosecution. The Claimant failed to appear at the hearing and has not otherwise objected to the dismissal of her claim.

My review of the record shows that more than six (6) months have passed after the filing of the Form AR-Cs for a claim of compensation. However, since that time the Claimant has failed to make a request for a hearing with respect to her workers' compensation claim. As such, I am persuaded that the Claimant has had ample time to pursue her claim 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 claim being dismissed.

Therefore, 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 should be granted pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13. This claim is 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 Form AR-Cs with the Commission on October 8 and November 20, 2020, alleging that Claimant sustained a work-related injury in the course and scope of her employment with the respondent-employer on May 20, 2020.
3. Since this time, the Claimant has failed to request a hearing or otherwise pursue her claim within the last six months.
4. On May 26, 2021, the Respondents filed with the Commission a motion to dismiss this claim.
5. The Claimant failed to appear at the hearing and has not responded to the notices of this Commission.
6. The evidence preponderates that the Respondents' motion to dismiss due to want of prosecution is well founded.
7. That the Respondents' Motion to Dismiss is hereby granted pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of the claim 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, this claim is hereby dismissed, without prejudice, to

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the refiling within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge