

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H107092

REBECCA A. DORRIS, EMPLOYEE	CLAIMANT
LAKE HAMILTON MIDDLE SCHOOL, EMPLOYER	RESPONDENT
AR SCHOOL BOARDS ASSOC, INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED SEPTEMBER 28, 2023.

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

Claimant, pro se, not appearing.

Respondents represented by Honorable Carol Lockard Worley, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held on September 20, 2023, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 SW. 3d 287 (2004), for a determination of whether the above-referenced case should be dismissed for failure to prosecute under the provisions of Ark. Code Ann, S 11-9-702 (Repl. 2012) and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was provided to all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the September 20, 2023, hearing and the documents held therein. The Respondents introduced one exhibit, a Respondents' Hearing Exhibit, consisting of nine numbered pages, which has been marked as Respondents' Exhibit 1. Additionally, the

entire Commission's file has been made a part of the record. It is hereby incorporated into the hearing transcript by reference.

Procedural History

On September 28, 2021, the Claimant filed with the Commission a claim for Arkansas workers' compensation benefits by way of a Form AR-C. The Claimant alleged that she sustained a compensable injury to her knee in April 2019 while working for the respondent-employer. The Claimant asked for both initial and additional workers' compensation benefits in the form of medical expenses and additional medical expenses.

The claims adjuster filed a Form AR-2 with the Commission on September 28, 2021, accepting this as a compensable medical only claim.

On that same day, the Claimant wrote to the Commission requesting a change of physician from Dr. Christopher Young to Dr. Micheal Hubbard. A Change of Physician Order was entered by the Commission's Medical Cost Containment Administrator on October 7, 2021.

Subsequently, there was no action taken by the Claimant to resolve her claim, and nor did she request a hearing.

Therefore, the Respondents filed a Motion to Dismiss with the Commission on July 5, 2023. The Respondents' pleading included a certificate of service to the Claimant affirming that they sent a copy of the above motion to the Claimant via certified mail through the United States Postal Service.

The Commission sent a letter-notice on July 7, 2023, to the Claimant by mailing it to her last known address via first-class and certified mail. Per this correspondence, the Commission gave the Claimant a deadline of twenty days to file a written response to the Respondents' motion.

On July 10, 2023, the above letter was delivered to the Claimant. The return receipt bears the Claimant's signature, which included only her last name.

Yet, there has been no response from the Claimant.

Therefore, pursuant to a Notice of Hearing dated August 14, 2023, the Commission notified the parties that a hearing was scheduled to address the Respondents' Motion to Dismiss. The notice was sent to the Claimant via first-class and certified mail to the same address as before. Said hearing was scheduled for September 20, 2023, at the Commission in Little Rock.

The hearing notice that the Commission sent to the Claimant via first-class mail has not been returned to the Commission. In this instance, the certified Notice of Hearing letter was claimed by the Claimant on August 16, 2023; and as before the first-class notice was not returned to the Commission. The evidence preponderate that the Claimant received notice of the hearing.

Still, there has been no response from the Claimant.

Subsequently, a hearing was in fact conducted on the Respondents' motion for dismissal as scheduled. Yet, the Claimant did not attend the dismissal hearing despite having received proper notice of the hearing. However, the Respondents appeared through their attorney.

Counsel noted that it has been more than six months since the filing of the claim, and a hearing has not been requested by the Claimant. The Respondents' attorney also noted that the Claimant has not made any effort to move forward with this claim. Therefore, counsel moved that this claim be dismissed under Ark. Code Ann. 511-9-702 or Arkansas Workers' Compensation Commission Rule 099.13, due to a lack of prosecution of the case by the Claimant.

Discussion

The record before me proves that the Claimant has failed to promptly prosecute her claim for workers' compensation benefits. The Claimant has not requested a hearing since the filing of

the Form AR-C in September 2021. More importantly, the Claimant did not appear at the hearing to object to her claim being dismissed.

Hence, the evidence proves that the Claimant has failed to request a hearing on her claim. Under these circumstances, I am compelled to find that the evidence preponderates that the Claimant has failed to prosecute her claim for workers' compensation benefits in the proper manner set forth under the law. Of note, I am persuaded that the evidence before me proves that the Claimant has abandoned her claim for workers' compensation benefits.

Therefore, per Ark. Code Ann. 51 1-9-702 and Rule 099.13 of this Commission, I find that this claim should be and is hereby respectfully dismissed, without prejudice to the refiling of it 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. 511-9-704 (Repl. 2012):

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 due to a lack of prosecution, for which a hearing was held.
3. The Claimant has not requested a hearing since the filing of her Form ARC, which was done in in September 2021. Hence, the evidence preponderates that the Claimant has failed to timely prosecute her claim.
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 Arkansas Code Ann. 51 1-9-702 and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER.

Following the findings of fact and conclusions of law set forth above, this claim is hereby dismissed per Ark. Code Ann. 511-9-702 and Rule 099.13, without prejudice, to the refiling of it, within the limitation period specified by law.

IT IS SO ORDERED:

CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE