

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: H302266

JEFFREY ELLIOTT, EMPLOYEE	CLAIMANT
ROGERS LUMBER COMPANY, INC., EMPLOYER	RESPONDENT
BRIDGEFIELD CASUALTY INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
SUMMIT COUNSULTING, LLC THIRD PARTY ADMINISTRATOR (TPA)	RESPONDENT

OPINION FILED FEBRUARY 23, 2024

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

The Claimant, pro se, did not appear at the hearing.

Respondents represented by the Honorable Jason M. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

This matter comes before the Commission pursuant to the Motion to Dismiss filed by Respondents. A hearing on the motion was conducted on November 29, 2023, in Little Rock, Arkansas. Thus, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to prosecute it under Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

The pro se Claimant failed to appear at the hearing. The record consists of the November 29, 2023, hearing transcript. Admitted into evidence was Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim, consisting of four numbered pages. Additionally,

in order to adequately address this matter under Ark. Code Ann. § 11-9-705(a)(1) (Repl. 2012)(Commission must “conduct the hearing . . . in a manner which best ascertains the rights of the parties”), and without objection, I have blue-backed to the record forms, pleadings, and correspondence from the Commission’s file on the claim, consisting of six pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, ___ S.W.3d ___, these documents have been served on the parties in conjunction with this opinion.

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

No testimony was taken at the hearing.

Background

The record reflects the following procedural history:

The Claimant filed a Form AR-C with the Commission on April 4, 2023, asserting his entitlement to workers’ compensation benefits. Per this document, the Claimant described the cause of injury as follows: “I flip stack and throw wood all day. One day my arm started hurting so I went to the hospital, and they said it was a pinched nerve. I took the paperwork to work and now I am home in pain with no income.” The date of the Claimant’s alleged accidental work-related injury was February 13, 2023. According to this document, the Claimant marked only the box for initial temporary partial disability workers’ compensation benefits. Yet, at that time, there was no request for a hearing made by the Claimant at that time.

On or about April 26, 2023, the Respondents filed a Form AR-2 with the Commission controverting this claim. Specifically, the claims adjuster stated: “Full Denial. No compensable accident. Does not meet statutory definition of accident. No evidence of a work- related accident.”

Still, the Claimant has not attempted to pursue or otherwise resolve this claim for workers' compensation benefits since the filing of the Form AR-C in February 2023.

On October 6, 2023, the Respondents filed a Motion to Dismiss with the Commission accompanied by a certificate of service to the Claimant indicating that they served a copy of the pleading on the Claimant by depositing a copy thereof in the United States Mail.

The Commission sent a letter advising the Claimant of the Respondents' motion on October 9, 2023. This correspondence was sent both certified mail and first-class mail. Per this letter, the Claimant was given twenty (20) days from the date of that letter to file a response to the motion.

The letter mailed to the Claimant by regular mail has not been returned to the Commission. However, said letter was mailed to the Claimant by certified mail was delivered to the Claimant's last known address and left with the Claimant on October 12, 2023. Hence, the signature of recipient section bears the Claimant's signed name.

Still, to date, there has been no response from the Claimant in this regard.

On October 31, 2023, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for November 29, 2023, on the Respondents' motion to dismiss.

Said notice was mailed to the Claimant by both certified and first-class mail.

Tracking information received by the Commission from the United States Postal Service shows that this item was delivered to the Claimant's residence on November 2, 2023, and left with an individual. However, the signature of the recipient of this notice is illegible. Moreover, the hearing notice mailed to the Claimant via first-class mail has not been returned to the Commission.

Still, there was no response from the Claimant.

However, a hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. The Claimant failed to appear at the hearing to object to the claim being dismissed.

Nevertheless, the Respondents' attorney requested that the claim be dismissed under Ark. Code Ann. §11-9-702 and Commission Rule 099.13 due to the Claimant's failure to prosecute said claim for workers' compensation benefits.

Review of the evidence shows that the Claimant has failed to respond to the written notices of this Commission and did not appear at the hearing to object to the dismissal. Moreover, since the filing of the Form AR-C in April 2023, the Claimant has not requested a hearing. Considering all the foregoing, I am persuaded to conclude that the Claimant has abandoned this claim for workers' compensation benefits.

Accordingly, 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 is warranted under the provisions of Ark. Code Ann. §11-9-702 and Rule 099.13 of this Commission. Said dismissal is *without prejudice*, to the refiling of this claim within the limitation period specified by law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the record, 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 April 4, 2023, the Claimant filed a Form AR-C with the Commission in this matter asserting his entitlement to workers' compensation benefits due to an alleged work-related accident occurring on February 13, 2023.
3. Since this time, and the filing of the Form AR-C, the Claimant has failed to make a bona fide request for a hearing in this matter.
4. The Respondents filed a Motion to Dismiss this claim in October 2023.
5. Reasonable notice of the Motion to Dismiss and hearing was had on all the

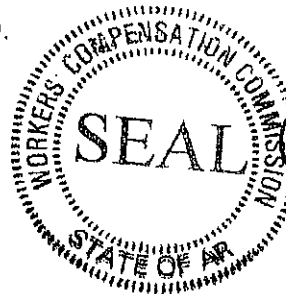
parties. The Claimant has failed to respond to the notices of this Commission and did not appear at the dismissal hearing to object to his claim being dismissed.


6. The evidence preponderates that the Respondents' motion for dismissal for a lack of prosecution is warranted.
7. That the Respondents' motion to dismiss is hereby granted pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13 *without prejudice*, to the refiling of the claim within the specified limitation period.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, this claim is hereby dismissed *without prejudice*, pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13 to the refiling of it within the specified limitation period.

IT IS SO ORDERED.




CHANDRA L. BLACK
Administrative Law Judge