

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H001141

TRISTON FORDHAM,
EMPLOYEE

CLAIMANT

MH CONSTRUCTION DESIGN LLC,
EMPLOYER

RESPONDENT

STARNET INSURANCE COMPANY/BERKLEYNET,
INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR/TPA

RESPONDENT

OPINION FILED FEBRUARY 25, 2022

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

Claimant, *pro se*, failed to appear.

Respondents represented by Ms. Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on February 23, 2022 in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012) and Arkansas Workers' Compensation Commission Rule 099.13.

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

The record consists of the transcript of the February 23, 2022, hearing and the documents contained therein. The Respondents introduced into evidence on exhibit consisting of eight(8) pages, which was marked Respondents' Exhibit 1. The Commission's file has also been made a part of the record. It is hereby incorporated herein by reference.

BACKGROUND

On December 7, 2020 the Claimant's attorney filed a Form AR-C with the Commission alleging that the Claimant sustained multiple compensable injuries in the course and scope of his employment with the respondent-employer on February 13, 2020. Counsel briefly described the cause of injury and part of body injured as follows: "Claimant was climbing up a scaffold, and a co-worker bumped into it causing client to fall about sixteen (16) feet and landed on a ladder. Client sustained injuries to his back, left arm, left elbow, left knee, and other whole body." The Claimant requested both initial and additional workers' compensation benefits.

The Claimant's attorney filed with the Commission an amended Form AR-C on February 12, 2021 for the same alleged injuries of February 13, 2020. However, Counsel amended the Form AR-C to add the following language: "Sustained injury to left shoulder as well as above, and other whole body."

The Respondents filed a Form AR-2 with the Commission on February 28, 2020, wherein they accepted compensability of this claim.

On July 19, 2021, the Claimant's attorney filed a Motion to Withdraw with the Commission. The Full Commission entered an order on July 30, 2021 granting the motion relieving the Claimant's attorney from representing him in this matter.

Since the filing of the Form AR-Cs, there has been no action on the part of the Claimant to prosecute or otherwise resolve his claim for workers' compensation benefits.

Therefore, the Respondents filed a Motion to Dismiss with the Commission on December 30, 2021, along with a Certificate of Service to the Claimant. I sent the Claimant a letter by certified mail on January 5, 2022 giving him twenty-one (21) days to respond to the Respondents' motion.

However, this item was returned to the Commission by the United States Postal Service marked, “Return to Sender, Unclaimed and Unable to Forward.”

There was no response from the Claimant.

As a result, a Notice of Hearing was mailed to the parties on January 22, 2022. At that time, the case was set for a hearing on February 23, 2022, at the Arkansas Workers’ Compensation Commission, in Little Rock. The tracking information received from the United States Postal Service shows that this notice was delivered to the Claimant’s last known address on January 29, 2022.

Still, there was no response from the Claimant.

A hearing was in fact held on the Respondents’ motion for dismissal of this claim. The Claimant did not appear at the hearing. However, the Respondents appeared through their attorney. Counsel for the Respondents essentially moved that this claim be dismissed due to a lack of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13. Information introduced into evidence by the Respondents’ attorney demonstrates that the Claimant notified the Respondents that he does not see any need to pursue any litigation against the Respondents since he has been on the payroll and able to work since the February 13, 2020 accident.

DISCUSSION

In that regard, the applicable law and Commission Rule are outlined below.

Specifically, Ark. Code Ann. §11-9-702 (Repl. 2012) reads:

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)

A review of the evidence shows that the Claimant has had ample opportunity to pursue this claim. However, he has failed to do so. The Claimant also failed to respond to the written notices of this Commission and did not appear at the scheduled hearing to object to the dismissal of his claim. Moreover, the Claimant has not requested a hearing on his claim since the filing of the Form AR-Cs, which were filed more than six (6) months ago. More importantly, the Claimant has indicated that he does not wish to pursue his claim for workers' compensation benefits. Hence, the evidence before me proves that the Claimant has abandoned his claim for workers' compensation benefits.

Therefore, based on my review of the documentary evidence, and all other matters properly before this Commission, I find that Respondents' motion for dismissal of the within claim should be granted pursuant to Ark. Code Ann. §11-9-702(Repl. 2012) and Commission Rule 099.13. Accordingly, this claim 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. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Claimant's former attorney filed a Form AR-C for benefits with the Commission in this matter on December 7, 2020 and February 28, 2021.
3. More than six (6) months have passed since the filing of the Form AR-Cs in this matter. However, since this time, the Claimant has not requested a hearing with respect to his claim for workers' compensation benefits.
4. On December 30, 2021, the Respondents filed a Motion to Dismiss this claim due to a lack of prosecution. A hearing was held on the Respondents' motion after proper notice of the hearing was had on all the parties. However, the Claimant failed to appear at the hearing and has stated in writing that he does not wish to pursue his claim for workers' compensation benefits.
5. The evidence preponderates that the Respondents' motion for dismissal due to a want of prosecution is warranted.
6. That the Respondents' motion to dismiss is hereby granted pursuant to the provisions of 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

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed without prejudice.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge

