

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H103561

JOSEPH E. FRAZIER, EMPLOYEE	CLAIMANT
SYSCO CORPORATION, EMPLOYER	RESPONDENT
AMERICAN ZURICH INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
CORVEL ENTERPRISE COMP., INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED JUNE 30, 2022

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

Claimant, pro se, not appearing.

Respondents represented by Mr. Michael C. Stiles, 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 June 29, 2022, 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). Specifically, the sole issue for determination was whether this claim should be dismissed due to the Claimant's failure to diligently prosecute it under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was tried on all the parties in the manner prescribed by law.

The record consists of the hearing transcript from June 29, 2022. Without objection from the Respondents, the Commission's file has been made a part of the record. It is hereby incorporated by reference to enable me to detail the history of the claim.

No testimony was taken at the hearing.

Background

The Claimant's former attorney filed a Form AR-C with the Commission in the above-styled claim on April 19, 2021. Per this document, the Claimant alleged he sustained an injury while working for the respondent-employer on June 25, 2020. Specifically, the Claimant described the cause of his injury and the part of body being injured, as follows: "The Claimant fell off a trailer and sustained injuries to his chest, spleen, back, and other whole body." Counsel requested on his behalf both initial and additional workers' compensation benefits. More Specifically, Claimant's counsel checked all the boxes for both initial and workers' compensation benefits.

On or about April 22, 2021, the Respondents filed a Form AR-2 with the Commission affirming this as an accepted compensable claim. It appears the Respondents began paying benefits to and on behalf of the Claimant in this matter.

Subsequently, there was no action on the part of the Claimant to prosecute his claim.

Interestingly, on March 28, 2022, the Claimant's attorney filed with the Commission, a motion to withdraw as the Claimant's counsel. The Full Commission granted the motion for counsel to withdraw as attorney of record in this matter pursuant to an Order entered on April 7, 2022.

Since the filing of the Form AR-C in April 2021, there has been no activity on the part of the Claimant to prosecute his claim for workers' compensation benefits. Most importantly, the

Claimant has not requested a hearing since the filing of the Form AR-C, which was filed roughly fourteen (14) months ago.

Therefore, on May 2, 2022, the Respondents filed with the Commission a Respondents' Motion to Dismiss Without Prejudice and Brief in Support of Respondents' Motion to Dismiss Without Prejudice. The Respondents served a copy of the foregoing pleading to the Claimant by depositing a copy thereof in the United States Mail addressed to the Claimant.

Subsequently, on May 6, 2022, I sent a letter to the Claimant informing him of the Respondents' motion, with a deadline for filing a written objection with the Commission. However, the United States Postal Service returned this item to the Commission marked "Return to Sender 'Unclaimed' Unable to Forward."

Thus far, there has been no response from the Claimant.

On May 31, 2022, the Commission sent a Notice of Hearing to the parties by way of certified mail, to inform them that a hearing on Respondents' motion had been scheduled for June 29, 2022.

Tracking information received by the Commission from the United States Postal Service shows that this notice was delivered to the Claimant's residence. It appears to bear a signature for proof of delivery.

So far, there has been no response from the Claimant.

Said hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. The Claimant did not appear at the hearing to object to his workers' compensation claim being dismissed. However, the Respondents' attorney appeared for the hearing. During the hearing, counsel essentially moved that the claim be dismissed because all appropriate benefits have been paid. More Specifically, counsel noted that at no point in time has the Claimant ever requested a

hearing before the Commission regarding this claim. Counsel asked that this claim be dismissed pursuant to the provisions of Ark. Code Ann. §11-9-702 (a)(4) and (d), as well as Commission Rule 099.13. Notably, the Respondents' attorney asked that the dismissal be granted pursuant to the aforesaid provisions since the Claimant asserted his entitlement to both types (initial and additional) of benefits on the Form AR-C.

Discussion

Ark. Code Ann. §11-9-702 (a)(4) (Repl. 2012) reads:

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within the limitation periods specified in subdivisions (a)(1)-(3) of this section.

Ark. Code Ann. §11-9-702 (d) (Repl. 2012) provides:

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 states:

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)

My review of the record shows that more than fourteen (14) months have passed since the filing of the Form AR-C in this claim for workers' compensation benefits. However, since this time, the Claimant has failed to make a request for a hearing before this Commission. Also, the Claimant failed to appear at the hearing to object to the dismissal of his claim. Hence, at no point in time has the Claimant ever requested a hearing.

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(a)(4) and (d), as well as Commission Rule 099.13. This claim is hereby 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. Reasonable notice of the dismissal hearing was tried on all the parties in the manner prescribed by law.
3. The evidence preponderates the Respondents' motion to dismiss due to want of prosecution is warranted.
4. That the Respondents' motion to dismiss is hereby granted pursuant Ark. Code Ann. §11-9-702 (a)(4) and (d) as well as 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, this claim is dismissed without prejudice under Ark. Code Ann. §11-9-702 (a)(4) and (d), as well as Rule 099.13, to the refiling of it within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge