

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H300022

YALONDA GARDNER, EMPLOYEE	CLAIMANT
RIVERCLIFF CO., INC., EMPLOYER	RESPONDENT
BRIDGEFIELD CASUALTY INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
SUMMIT CONSULTING, LLC, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED AUGUST 14, 2023

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

Claimant, pro se, failed to appear at the hearing.

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

Statement of the Case

A hearing was held on August 9, 2023 in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), for a determination of 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 attempted on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the August 9, 2023, hearing and the documents contained therein. Additionally, the entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

Discussion

On January 3, 2023, 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 compensable injuries on October 17, 2022, while her performing employment duties for the respondent-employer. The Claimant asked for both initial and additional workers' compensation benefits. In fact, the Claimant checked all the boxes for every conceivable benefit under the law in connection with this claim.

The claims adjuster sent a letter to the Commission on January 5, 2023, stating, "In response to the Form AR-C filed in this matter, the Respondents have accepted the claim as Medical only as no lost time from work." Additionally, the respondent-insurance carrier filed a Form AR-2 with the Commission on January 24, 2023, accepting this as a compensable medical only claim for injuries to the Claimant's lower legs.

On February 1, 2023, the Respondents' attorney entered an appearance via correspondent to the Commission. Counsel offered his full cooperation on behalf of his client and invited the Claimant or his representative to contact him to resolve any issues that could be resolved without a hearing.

However, there was no action taken by the Claimant to resolve her claim, nor did the Claimant file a request for a hearing. Therefore, the Respondents filed a Motion to Dismiss with the Commission on June 6, 2023. This pleading was accompanied by a certificate of service to

the Claimant. Specifically, the Respondents mailed a copy of this document to the Claimant via the United States Postal Service.

The Commission sent a letter-notice to the Claimant by mailing it to her last known address with the Commission on June 8, 2023. Said letter was sent by first-class and certified mail. Per this correspondence, the Claimant was given a deadline of twenty days, for filing a written response to the Respondents' motion for dismissal.

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

However, the United States Postal Service informed the Commission on June 8, 2023, that they were unable to locate any delivery information on this item,

Therefore, pursuant to a Hearing Notice dated July 7, 2023, the Commission notified the parties that a hearing was scheduled to address the Respondents' motion to dismiss this claim due to a lack of prosecution. The notice was sent to the Claimant via first-class and certified mail. Said hearing was scheduled for August 9, 2023, at the Commission in Little Rock, Arkansas.

The Hearing Notice mailed to the Claimant via certified mail was delivered to the Claimant's home on July 10, 2023. However, the identity of the individual taking delivery of this item is unclear because the recipient's signature as it appears on the return receipt is illegible.

Still, there was no reply from the Claimant.

Subsequently, a hearing was in fact conducted on the Respondents' motion for dismissal as scheduled. The Claimant failed to appear at the dismissal hearing. However, the Respondents appeared through their attorney.

Counsel noted that the Claimant has failed to timely prosecute her claim for workers' compensation benefits since the filing of the Form AR-C in January 2023. Therefore, counsel moved that this claim be dismissed under Ark. Code Ann. §11-9-702 and Arkansas Workers'

Compensation Commission Rule 099.13, without prejudice due to a lack of prosecution of the case by the Claimant.

The record before me proves that the Claimant has failed to timely prosecute her claim for workers' compensation benefits. The Claimant has not requested a hearing since the filing of the Form AR-C. She failed to appear at the hearing to object to her claim being dismissed and she has not responded to the notices of this Commission. Under these circumstances, I am compelled to find that the evidence preponderates that the Claimant has failed to promptly prosecute her claim in the manner set forth under the law. Therefore, per Ark. Code Ann. §11-9-702 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 with 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 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 the Form AR-C, which was done over eight months ago. Hence, the evidence preponderates that the Claimant has failed to prosecute her claim for workers' compensation benefits.
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*, pursuant to Arkansas Code Ann. §11-9-702 and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed pursuant to Arkansas Code Ann. 11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13, *without prejudice*, to the refiling of it, within the limitation period specified by law.

IT IS SO ORDERED.

HON. CHANDRA L. BLACK
Administrative Law Judge