

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H002817

SHAWN D. GASTON, EMPLOYEE

CLAIMANT

HERITAGE AGRICULTURE, EMPLOYER

RESPONDENT

**ACADIA INSURANCE CO./UNION
STANDARD INSURANCE, CARRIER/TPA**

RESPONDENT

OPINION FILED SEPTEMBER 30, 2022

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant, Mr. Shawn D. Gaston, *pro se*, failed to appear at the hearing.

Respondents were represented by Mrs. Carol L. Worley, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on September 22, 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 and Arkansas Workers' Compensation Commission Rule 099.13.

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

The record consists of the transcript of the September 22, 2022, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated by reference. Respondents submitted an exhibit packet consisting of nine (9) pages, including: the Form AR-C, an Order to Withdraw, correspondence and Respondents' Motion to Dismiss; correspondence to the Claimant; and the Notice of Hearing. The packet was labeled as Respondents' Exhibit No. 1 and was admitted into evidence.

DISCUSSION

Claimant alleged that he sustained an injury to his right shoulder on May 4, 2020, while working for the Respondent-Employer.

On May 21, 2020, Respondents filed a Form AR-2 with the Commission accepting the right shoulder strain as compensable. A second Form AR-2 was filed on July 2, 2020, disputing anything beyond the right shoulder strain. A third Form AR-2 was filed on March 8, 2021, demonstrating that the average weekly wage and compensation rates had been recalculated and the deficit had been paid.

On January 24, 2022, Claimant's previous counsel filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of May 4, 2020, and alleged the following: "Right shoulder: Claimant was trying to jack up a tractor. When put jack stand under tractor the tractor slid off the jack." On the Form AR-C, Claimant asserted his entitlement to initial and additional workers' compensation benefits.

On April 11, 2022, Claimant's counsel filed a motion to withdraw as attorney of record, and the Full Commission granted the request on April 22, 2022.

On July 25, 2022, Respondents filed with the Commission a Motion to Dismiss for failure to prosecute. On July 26, 2022, the Commission sent a Notice to Claimant advising him of Respondents' Motion and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated August 17, 2022, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss. Said hearing was scheduled for September 22, 2022, at 1:00 p.m., at the Arkansas Workers' Compensation

GASTON – H002817

Commission, 324 South Spring Street, Hearing Room A, Little Rock, Arkansas. The Hearing Notice was sent to Claimant via Certified Mail – Return Receipt Requested-- and First-Class Mail. The Certified Mail was returned to the Commission on September 22, 2022. The First-Class Mail was not returned. There was no response from the Claimant regarding the hearing notice.

Therefore, a hearing was in fact conducted as scheduled on Respondents' Motion to Dismiss for failure to prosecute. Respondents appeared through their attorney. However, the Claimant failed to appear at the hearing.

Counsel advised that the Respondents had accepted the claim and paid benefits, including four percent (4%) permanent impairment rating for the Claimant's right shoulder injury. Since that time, the Claimant had not responded to any correspondence from the Commission, and the Respondents had not had any communication with the Claimant. In sum, there have been no efforts by the Claimant to prosecute the claim. Moreover, the Claimant was not present at the hearing on the Motion to Dismiss. As such, Counsel requested that the claim be dismissed, without prejudice, pursuant to Ark. Code Ann. § 11-9-702 and our Rule 099.13.

A review of the evidence shows that Claimant has had sufficient time to pursue his claim for workers' compensation benefits. It has been approximately eight (8) months since the Claimant filed a Form AR-C in this matter. Further, to date, Claimant has not requested a *bona fide* hearing or otherwise attempted to prosecute his claim further. Hence, Claimant has failed to timely prosecute his claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents' motion for the dismissal of this claim to be well supported. Furthermore, I find that pursuant to Ark. Code

Ann. § 11-9-702 and Commission Rule 099.13, this claim for workers' compensation benefits should be dismissed, without prejudice, to the refiling within the applicable time period.

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. On May 21, 2020, Respondents filed a Form AR-2 with the Commission accepting the right shoulder strain as compensable. A second Form AR-2 was filed on July 2, 2020, disputing anything beyond the right shoulder strain, and a third Form AR-2 was filed on March 8, 2021, demonstrating that the average weekly wage and compensation rates had been recalculated and the deficit had been paid.
3. On January 24, 2022, Claimant's previous counsel filed a Form AR-C with the Commission asserting his entitlement to initial and additional workers' compensation benefits.
4. On April 11, 2022, Claimant's counsel filed a motion to withdraw as attorney of record, and the Full Commission granted the request on April 22, 2022.
5. On July 25, 2022, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute.
6. Approximately eight (8) months have passed since Claimant filed a Form AR-C, with the Commission. However, since this time Claimant has failed to make a *bona fide* request for a hearing or otherwise resolve his claim for workers' compensation benefits.
7. Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no action has been taken by Claimant in furtherance of his claim, as he has failed to timely prosecute this matter.
8. Respondents' Motion to Dismiss for Failure to Prosecute is well founded.

9. Respondents' Motion to Dismiss for Failure to Prosecute should be granted pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of the claim within the applicable time period.
10. Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of this claim within the applicable time period.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE