

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. HOO1368

DONALD GIBSON,
EMPLOYEE

CLAIMANT

DIAMOND CONSTRUCTION COMPANY, INC.,
EMPLOYER

RESPONDENT

ACCIDENT FUND INSURANCE COMPANY OF AMERICA,
INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR
(TPA)

RESPONDENT

OPINION FILED JULY 9, 2021

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

Claimant, pro se, not appearing.

Respondents represented by Mr. Guy Wade, 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 July 8, 2021, 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). Here, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the hearing transcript of the July 8, 2021. The Respondents offered into evidence, one exhibit which consisted of twelve (12) pages. It was marked as Respondents' Exhibit No. 1. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

No testimony was taken at the hearing.

DISCUSSION

The Claimant's former attorney filed a Form AR-C with the Commission on April 10, 2020 in the above-styled worker's compensation claim. Per this document, the Claimant asserted his entitlement to both initial and additional workers' compensation benefits. The Claimant's alleged work-related incident occurred on February 27, 2020. Counsel for the Claimant briefly described the cause of injury and the part of body injured: "Claimant was lifting a boulder when he injured his back and other whole body."

It appears that on or about April 27, 2020, the Respondents filed a Form AR-2 with the Commission controverting this claim as of April 14, 2020. Specifically, the Respondents stated: "claim [sic] controverted 4/14/2020. Respondents [sic] position is that claim is not compensable."

Since the filing of the Form AR-C, the Claimant has failed to request a hearing on the merits before the Commission.

Therefore, on April 22, 2021, the Respondents filed with the Commission a letter motion to dismiss due to a lack of prosecution.

However, on April 23, 2021, the Claimant's former attorney filed a motion to withdraw as Claimant's attorney in this matter. The Full Commission entered an order on May 11, 2021 granting the Claimant's attorney motion to withdraw of as counsel of record in this workers' compensation claim.

Still, there has been no action taken by the Claimant to pursue his claim.

On May 12, 2021, the Commission sent a notice to the Claimant informing him of the motion, with a deadline of June 2, 2021 for filing a written objection.

There has been no response from the Claimant.

Ultimately, on June 22, 2021, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for July 8, 2021, on the Respondents' motion to dismiss.

Said hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. During the hearing, counsel for the Respondents moved that the claim be dismissed due to a lack of prosecution.

My review of the record shows that more than six (6) months have passed after the filing of the Form AR-C for a claim of compensation. However, since this time the Claimant has failed to make a request for a hearing with respect to this claim. As such, I am persuaded that the Claimant has had ample time to pursue his claim for workers' compensation benefits but has failed to do so. Furthermore, the Claimant has also failed to respond to the notices of this Commission and has not objected to his claim being dismissed.

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 and Rule 099.13. This claim is hereby dismissed without prejudice, to the refiling 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. The Claimant's former attorney filed a Form AR-C with the Commission on April 10, 2020, alleging that Claimant sustained a work-related injury in the course and scope of his employment with the respondent-employer on February 27, 2020.
3. Since this time, the Claimant has failed to request a hearing or otherwise pursue his claim.

4. On April 22, 2021, the Respondents filed with the Commission a motion to dismiss this claim.
5. The evidence preponderates the Respondents' motion to dismiss due to want of prosecution is well founded.
6. That the Respondents' Motion to Dismiss is hereby granted pursuant to 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

Based on the foregoing Findings of Fact and Conclusions of Law, I find that pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13, this claim is hereby dismissed without prejudice, to the refiling within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge