

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: H301180

LUCY GLASS, EMPLOYEE	CLAIMANT
GURDON TRUCK STOP & TRAVEL CENTER, EMPLOYER	RESPONDENT
FIRST COMP. INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
MARKEL SERVICE, INC., THIRD PARTY ADMINISTRATOR (TPA)	RESPONDENT

OPINION FILED FEBRUARY 22, 2024

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

The Claimant, pro se, did not appear at the hearing.

Respondents represented by the Honorable Amelia Botteicher, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

This matter comes before the Commission pursuant to the Motion to Dismiss filed by Respondents. A hearing on the motion was conducted on November 15, 2023, in Little Rock, Arkansas. Thus, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to 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 November 15, 2023, hearing transcript. In order to adequately address this matter under Ark. Code Ann. § 11-9-705(a)(1) (Repl. 2012)(Commission must "conduct the hearing . . . in a manner which best ascertains the rights of the parties"), and without

objection, I have blue-backed to the correspondence from the Commission's file on this claim, consisting of nine pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, ___ S.W.3d ___, these documents have been served on the parties in conjunction with this opinion.

Reasonable notice of the dismissal hearing was had on all the parties in the manner set by law.

No testimony was taken at the hearing.

Background

The record reflects the following procedural history:

The Claimant filed a Form AR-C with the Commission on February 15, 2023, asserting entitlement to workers' compensation benefits. Per this document, the Claimant sustained an accidental work-related injury was January 14, 2023. According to this document, the Claimant sustained injuries to her right hip, right shoulder, and right knee. The Claimant marked all of the boxes for workers' compensation benefits. Yet, at that time, there was no request for a hearing made.

On March 13, 2023, the Respondents filed a Form AR-2 with the Commission accepting liability of this claim in its entirety. Specifically, claims assistant stated: "Denying cervical injury and ONLY accepting the right hip, right knee and right shoulder injuries."

Since the filing of the Form AR-C, the Claimant has not attempted to pursue or otherwise resolve this claim for workers' compensation benefits.

On September 15, 2023, the Respondents filed a Motion to Dismiss with the Commission accompanied by a certificate of service to the Claimant indicating that they served a copy of the pleading on her by depositing a copy thereof in the United States Mail.

The Commission sent a letter advising the Claimant of the Respondents' motion on September 18, 2023. This correspondence was sent both certified mail and first-class mail. Per this letter, the Claimant was given twenty (20) days from the date of that letter to file a response to the motion.

The letter mailed to the Claimant by first class mail has not been returned to the Commission. However, the letter mailed to the Claimant by certified mail was left with an individual at her last known address listed with the Commission. The signature of the recipient on the tracking information received from the United States Postal Service is illegible.

Still, to date, there has been no response from the Claimant in this regard.

On October 12, 2023, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for November 15, 2023, on the Respondents' motion to dismiss.

Said notice was mailed to the Claimant both by certified and first-class mail.

Tracking information received by the Commission from the United States Postal Service shows that the hearing notice mailed to the Claimant by certified mail was left with an individual at her last known address. Once again, the signature of the recipient on the tracking information received from the United States Postal Service is illegible.

Still, there was no response from the Claimant.

However, a hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. The Claimant failed to appear at the hearing to object to her claim being dismissed. Nevertheless, the Respondents' attorney moved that the claim be dismissed under Ark. Code Ann. §11-9-702 and Commission Rule 099.13 due to the Claimant's failure to prosecute said claim for workers' compensation benefits.

Review of the evidence shows that the Claimant has failed to respond to the written notices of this Commission and did not appear at the hearing to object to the dismissal of her claim. Moreover, since the filing of the Form AR-C in February 2023, the Claimant has not requested a hearing. Considering all the foregoing, I am persuaded to conclude that the Claimant has abandoned this claim for workers' compensation benefits.

Accordingly, 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 is warranted under the provisions of Ark. Code Ann. §11-9-702 and Rule 099.13 of this Commission. Said dismissal is *without prejudice*, to the refile of this claim within the limitation period specified by law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the record, 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 filed a Form AR-C with the Commission on February 15, 2023, in this matter asserting the Claimant's entitlement to workers' compensation benefits due to an incident occurring at work in January 2023.
3. Since this time, and the filing of the Form AR-C, the Claimant has failed to make a bona fide request for a hearing in this matter.
4. The Respondents filed a Motion to Dismiss this claim in September 2023.
5. Reasonable notice of the Motion to Dismiss and hearing was had on all the parties. The Claimant has failed to respond to the notices of this Commission and did not appear at the hearing to object to her claim being dismissed.
6. The evidence preponderates that the Respondents' motion for dismissal for a lack of prosecution is warranted.
7. That the Respondents' motion to dismiss is hereby granted pursuant to Ark.

Code Ann. §11-9-702 and Rule 099.13 *without prejudice*, to the refiling of the claim within the specified limitation period.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, this claim is hereby dismissed *without prejudice*, pursuant to Ark. Code Ann. §11-9-702, and Commission Rule 099.13 to the refiling of it within the specified limitation period.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge