

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: H208461

HANSFORD GOURLEY (DEC'D) EMPLOYEE	CLAIMANT
NEVADA COUNTY, EMPLOYER	RESPONDENT
ASSOC. OF ARKANSAS COUNTIES, WC TRUST, INSURANCE CARRIER	RESPONDENT
AAC RISK MANAGEMENT SERVICES, 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 Jarrod Parrish, 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 October 24, 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 Claimant, per my review of Commission records is pro se, failed to appear at the hearing. The record consists of the October 24, 2023, hearing transcript. Admitted into evidence was Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim, consisting

of seven numbered pages. Additionally, 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 three 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 deceased Claimant’s widowed representative, Christy Gourley, filed a Form AR-C with the Commission on December 15, 2022, asserting the Claimant’s entitlement to workers’ compensation benefits. Per this document, the Claimant’s wife alleged that he sustained a fatal heart attack while working for the respondent-employer. The date of the Claimant’s alleged accidental work-related injury was November 2, 2022. According to this document, the Claimant’s widow did not mark any of the boxes for workers’ compensation benefits. Yet, at that time, there was no request for a hearing made.

On or about December 5, 2022, the Respondents filed a Form AR-2 with the Commission controverting liability of this claim in its entirety. Specifically, the claims adjuster wrote: “Denied. Not a result of a work-related incident.”

Still, the Claimant has not attempted to pursue or otherwise resolve this claim for workers’ compensation benefits since the filing of the Form AR-C in December 2022.

On August 29, 2023, the Respondents filed a Motion to Dismiss with the Commission accompanied by a certificate of service to the Claimant's widow 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 August 31, 2023, via 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.

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

On September 20, 2023, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for October 24, 2023, on the Respondents' motion to dismiss.

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

Tracking information received by the Commission from the United States Postal Service did not show any delivery information on this item. However, the letter mailed to the Claimant via first-class mail has not been returned to the Commission.

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 this workers' compensation claim being dismissed. Nevertheless, the Respondents' attorney moved that this claim be dismissed under Ark. Code Ann. §11-9-702 and Commission Rule 099.13 due to the Claimant's spouse failure to prosecute it.

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. Moreover, since the filing of the Form AR-C in December 2022, 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 refiling 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's widow filed a Form AR-C with the Commission on December 15, 2022, in this matter asserting the Claimant's entitlement to workers' compensation benefits due to an incident occurring at work in November 2022.
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 this claim being dismissed.
6. The evidence preponderates that the Respondents' motion for dismissal 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