

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G807290

CEDRIC L. GRAVES, EMPLOYEE

CLAIMANT

**WALMART ASSOCIATES, INC.,
SELF-INSURED EMPLOYER**

RESPONDENT #1

**DEATH & PERMANENT TOTAL DISABILITY
TRUST FUND**

RESPONDENT #2

OPINION FILED APRIL 2, 2021

Hearing before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant, Mr. Cedric L. Graves, was represented by Ms. Laura Beth York, Attorney at Law, Little Rock, Arkansas. Ms. York waived her appearance at the hearing. Claimant appeared at the hearing with the consent of Ms. York.

Respondent #1 was represented by Mr. Curtis L. Nebben, Attorney at Law, Fayetteville, Arkansas.

Respondent #2 was represented by Mr. David Pake, Attorney at Law, Little Rock, Arkansas. Mr. Pake waived his appearance at the hearing.

STATEMENT OF THE CASE

A hearing was held on March 12, 2021, 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 March 12, 2021, 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 herein by reference.

DISCUSSION

On October 6, 2018, Claimant sustained an admittedly compensable injury to his left shoulder while working for Respondent-Employer. Claimant’s attorney filed a Form AR-C with the Commission on October 29, 2018. Per this form, Claimant asserted an accident date of October 6, 2018, and asserted his entitlement to workers’ compensation benefits. In the Form AR-C, Claimant’s cause of injury was described as: “While changing the oil in a customer’s vehicle, Claimant was descending the stairs/ladder and fell. Claimant sustained injuries to his left shoulder, collarbone, and other whole body.”

The Respondent-Insurance-Carrier filed a Form AR-2 with the Commission on October 30, 2018. The carrier accepted compensability of the claim for the left shoulder injury as a result of the October 6, 2018, incident and paid benefits.

A hearing was held in this matter on January 17, 2020. An opinion was issued by the Administrative Law Judge on May 20, 2020, wherein Claimant was awarded ten percent (10%) wage loss in addition to the six percent (6%) rating, for a total of sixteen percent (16%) in permanent partial disability benefits. It was determined that Claimant was not permanently and totally disabled.

Both parties appealed to the Full Commission. On October 13, 2020, the Full Commission affirmed and adopted the opinion of the Administrative Law Judge. Subsequently, there was no action taken by Claimant to prosecute his claim.

On January 21, 2021, Respondents filed with the Commission a motion requesting dismissal of the within claim for lack of prosecution. On January 26, 2021, the Commission sent a Notice to Claimant’s attorney advising her of Respondents’ request for dismissal and a deadline

for filing a written response. On January 29, 2021, Claimant's attorney responded via e-mail indicating there was no objection to the Motion to Dismiss, if done so without prejudice.

Pursuant to a Hearing Notice dated February 1, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents' request for dismissal for lack of prosecution. Said hearing was scheduled for March 12, 2021, at 12:30 p.m., at the Jefferson County Courthouse, in Pine Bluff, Arkansas.

Also, on February 1, 2021, Claimant's attorney informed the Commission via e-mail that she waived her appearance at the hearing. On February 5, 2021, Claimant's attorney issued a letter advising the Commission that while Claimant had not previously objected to Respondent's Motion to Dismiss, Claimant now wished to change that contention; that Claimant objected to the Motion to Dismiss; and that Claimant would attend the hearing without her.

Ultimately, the location of the hearing was moved to the Arkansas Workers' Compensation Commission Hearing Room "B," Third Floor, 324 S. Spring Street, in Little Rock, Arkansas. The date and time remained the same. United States Postal Service records indicated that the Hearing Notice was sent via First-Class Mail and Certified Mail to Claimant at his address of record.

On Friday, March 12, 2021, a hearing was in fact conducted on Respondents' request for dismissal. Claimant appeared without his attorney of record. Claimant testified that he did not feel that the award he received was "fair" and that he wanted more time to pursue his claim. Claimant stated that he objected to the request for dismissal. Respondents appeared through their attorney and asked that the claim be dismissed for failure to prosecute.

With respect to the Motion to Dismiss for a lack of prosecution, I find that Respondents' motion should be respectfully denied at this time based on Claimant's appearance at the hearing,

wherein he objected to his claim being dismissed on the basis that he wishes to pursue a claim for more benefits.

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.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On October 6, 2018, Claimant sustained an admittedly compensable injury to his left shoulder.
3. On October 29, 2018, Claimant's attorney filed a Form AR-C with the Commission seeking workers' compensation benefits in this matter.
4. On October 30, 2018, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission, accepting compensability of the claim for the left shoulder injury as a result of the October 6, 2018, incident and paid benefits.
5. After an October 13, 2020, opinion by the Full Commission awarding wage-loss disability benefits, no further appeals were filed, and no further action was taken by Claimant to prosecute his claim.
6. On January 21, 2021, Respondents filed with the Commission a Motion to Dismiss for lack of prosecution.
7. Claimant has objected to the dismissal of his workers' compensation claim.
8. Respondents' Motion to Dismiss for lack of prosecution should be, and is respectfully, denied. The matter will be set for a prehearing telephone conference in preparation for a full hearing.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to deny the motion for dismissal of this claim for workers' compensation benefits, arising out of Claimant's October 6, 2018, injury.

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IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE