

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: G907991

RONALD HALL,
EMPLOYEE CLAIMANT

POTLATCHDELTA CORPORATION.,
EMPLOYER RESPONDENT

SENTRY CASUALTY INSURANCE COMPANY,
INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED OCTOBER 15, 2021

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

Claimant, pro se, failed to appear at the hearing.

Respondents represented by Mr. Jarrod S. Parrish, 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 October 13, 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 the provisions of 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 October 13, 2021. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference. Respondents offered into evidence one exhibit, a Respondents' Hearing Exhibit Index, consisting of fifteen (15) numbered pages. Said exhibit has been marked as Respondents' Exhibit

No testimony was taken at the hearing.

DISCUSSION

The Claimant’s prior attorney filed a Form AR-C for workers’ compensation benefits with the Commission on January 27, 2020 in the above-styled claim. Per this document, the Claimant asserted his entitlement to both initial and additional workers’ compensation benefits. His alleged work-related incident occurred on November 24, 2019. Counsel for the Claimant briefly described the cause of injury and the part of body injured: “Claimant was driving a forklift when it struck a pothole causing him to bounce around. Claimant sustained an injury to his back and other whole body.”

On or about December 9, 2019, the Respondents filed a Form AR-2 with the Commission accepting this as a compensable claim. They paid appropriate benefits.

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

However, May 6, 2021 the Claimant’s attorney filed a motion to withdraw as the Claimant’s attorney in this workers’ compensation claim. On June 3, 2021, the Full Commission entered an order granting the motion. Meanwhile, the Claimant has failed to prosecute or otherwise pursue his claim.

Therefore, on July 30, 2021, the Respondents filed a “Motion to Dismiss for Failure to Prosecute,” with a Certificate of Service to the Claimant.

On August 3, 2021, the Commission sent a notice to the Claimant of the motion with a deadline for filing a written objection. The Claimant wrote the following letter to the Commission on August 11, 2021 (filed with the Commission on August 16, 2021). It reads, in relevant part:

“Dear Sir or Madam, I do not wish to dismiss the claim at this time.” As a result, the Respondents’ motion to dismiss was held in abeyance.

Therefore, on August 18, 2021, the Commission forwarded Preliminary Notices and Questionnaires to the parties with deadlines for filing a written response. The Claimant failed to file a response. In light of the Claimant’s failure to make a prehearing filing, the Respondents renewed their dismissal request on September 15, 2021.

On that same date, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for Wednesday, at 10:30 a.m., on October 13, 2021, on the Respondents’ motion to dismiss.

However, there was no response from the Claimant regarding this hearing notice. Information received by the Commission from the United States Postal Service shows that they delivered this item to the Claimant’s home on September 17, 2021. The delivery receipt bears the Claimant’s signature. However, there has been no response from the Claimant regarding this said notice.

A hearing was conducted before the Commission, 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 subsequent to the filing of the Form AR-C for a claim of benefits. However, since that time the Claimant has failed to make a bona fide request for a hearing with respect to his claim for workers’ compensation benefits. Hence, no action whatsoever has been taken by the Claimant to resolve or pursue his claim. Moreover, despite being given notice of the dismissal hearing in the manner prescribed under the law, the Claimant failed to appear at the hearing to object to the dismissal.

Under these circumstances, I am persuaded that the Claimant has had ample time to pursue his claim for benefits but failed to do so. 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 the within claim should be granted pursuant to the provisions of Ark. Code Ann. §11-9-702 and Rule 099.13. Accordingly, this claim is hereby dismissed without prejudice, to the refiling of it 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 filed a Form AR-C for workers' compensation benefits with the Commission on January 27, 2020, alleging that he sustained a work-related injury in the course and scope of his employment with the respondent-employer on November 24, 2019.
3. Since this time, the Claimant has failed to request a hearing on the merits or otherwise tried to resolve his claim for workers' compensation benefits.
4. The Respondents filed with the Commission a motion to dismiss this claim.
5. After notice of hearing was given on the parties in the manner prescribed by law, a hearing was held on the Respondents' motion to dismiss. However, the Claimant failed to appear at the hearing to object to his claim being dismissed and he has not responded to the written notices of this Commission.
6. More than six (6) months have passed since the filing of the claim and no bona fide request for a hearing has been made.
7. The evidence preponderates that the dismissal for want of prosecution is warranted.
8. Notice of the hearing was attempted on all the parties in the manner prescribed by law.

9. That the Respondents’ motion to dismiss is hereby granted pursuant to the provisions of 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