

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. HOO6496

DUSTIN HAMILTON,
EMPLOYEE

CLAIMANT

HIXON LUMBER SALES, INC.,
EMPLOYER

RESPONDENT

ARCADIA INSURANCE COMPANY/UNION STANDARD,
INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED APRIL 23, 2021

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, in Little Rock, Pulaski County, Arkansas.

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

Respondents represented by Ms. Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' Motion to Dismiss, on March 24, 2021, in the present claim for workers' compensation benefits pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), for a determination of whether this claim should be dismissed due to the Claimant's failure to timely prosecute it pursuant to Ark. Code Ann. §11-9-702 and/or Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the hearing transcript of the March 24, 2021. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

DISCUSSION

The Claimant filed a letter with the Commission on October 2, 2020 requesting a hearing

in the above styled workers' compensation claim. His alleged work-related incident for the within claim occurred on August 31, 2020. It appears that on September 10, 2020, the Respondents filed a Form AR-2 with the Commission controverting this claim. Specifically, the Respondents stated: "Claim denied in its entirety. The Claimant was in a state of intoxication and therefore the carrier disputes the existence of a work-related injury."

Upon receipt of the Claimant's request for a hearing, the Commission assigned this file to the Legal Advisors Division of this Commission for a mandatory mediation conference. This assignment was done on October 5, 2020. However, the legal advisor's attempt to set up a mediation conference with the parties failed. Therefore, on October 30, 2020, the Clerk of the Commission reassigned the file to the Adjudication Division of the Commission for a hearing on the merits before an administrative law judge.

On November 5, 2020, the Commission mailed Prehearing Notices and Questionnaires to the parties, with deadlines for making timely responses. Both parties made prompt responses. A Prehearing Telephone Conference was conducted with the parties on January 13, 2021. At that time, a hearing was scheduled on this claim for Wednesday, April 7, 2021 at 10:00 a.m. at the Union County Courthouse, in El Dorado, Arkansas.

However, on January 22, 2021, the Claimant wrote the following letter to the Commission: "I Dustin Hamilton want to drop my case against workers [sic] comp in the case # H006496." On January 26, 2021, the hearing was cancelled, and the claim was returned to the Commission's general files."

Therefore, on January 27, 2021, the Respondents filed a Respondents' Motion to Dismiss, with a Certificate of Service to the Claimant. On February 1, 2021, the Commission sent a notice

to the Claimant of the motion with a deadline of twenty days for filing a written objection. There was no response from the Claimant.

On February 25, 2021, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for March 24, 2021, on the Respondents' motion. Still, there has been no response from the Claimant. However, the return receipt request from the United Postal Service shows that they delivered this parcel of mail to the Claimant's last known address listed with the Commission. As such, the record shows that appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

Nevertheless, a hearing was conducted before the Commission, on the Respondents' Motion to Dismiss as previously scheduled-on March 24, 2021. During the hearing, counsel for the Respondents asserted, among other things, that the Claimant has asked that his claim be "dropped." In light of this, the Respondents moved that the claim be dismissed.

A review of the evidence shows that the Claimant has had ample time to pursue his claim for workers' compensation benefits. However, the Claimant has decided not to do so. Specifically, the Claimant has asked that his workers' compensation claim be "dropped."

Therefore, based on my review of the Respondents' motion, the Claimant's request to "drop" his claim, and all other matters properly before the Commission, I find that the Respondents' Motion to Dismiss this claim should be and is hereby granted under Commission Rule 099.13. Accordingly, this claim for workers' compensation benefits is dismissed without prejudice to the refiling within the applicable limitation period.

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 or about, the Claimant filed a letter claim with the Commission on October 2, 2020, wherein he requested a hearing.
3. Prior to this on September 10, 2020, the Respondents filed a Form AR-2, with the Commission denying the within claim.
4. The Claimant requested per a letter filed with the Commission on January 22, 2021 that his claim for workers' compensation benefits be "dropped."
5. On January 27, 2021, the Respondents filed a Motion to Dismiss with the Commission.
6. A hearing was held March 24, 2021, before the Commission, on the Respondents' Motion to Dismiss. The Claimant failed to appear for the hearing; although appropriate notice of the hearing was had on all the parties in the manner as prescribed by law to their last known address.
7. The Claimant has notified the Commission that he has decided not to pursue his workers' compensation claim.
8. That the Respondents' Motion to Dismiss should be granted pursuant to Commission Rule 099.13, without prejudice, to the refiling of the claim within the applicable limitation period.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim for workers' compensation benefits. This claim is hereby dismissed under Commission Rule 099.13, without prejudice to the refiling of this claim within the applicable limitation period.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge

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