

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: G904940

JOHN F. HARGIS,
EMPLOYEE

CLAIMANT

DIVERSIFIED CONSTRUCTION & DESIGN, LLC,
EMPLOYER

RESPONDENT

SUMMIT CONSULTING, LLC,
INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR
(TPA)

RESPONDENT

OPINION FILED MARCH 17, 2022

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

Claimant, pro se, not appearing.

Respondents represented by Mr. Jason M. Ryburn, 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 March 15, 2022, 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). Specifically, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was tried on all the parties in the manner prescribed by law.

The record consists of the hearing transcript of the March 15, 2022. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

No testimony was taken at the hearing.

Procedural Background

The Claimant's former attorney filed two Form AR-Cs with the Commission in the above-styled claim. These documents were filed on August 2, 2019 and on or about July 15, 2021 for an alleged injury arising out of the same incident of July 23, 2019. Per these documents, the Claimant asserted his entitlement to both initial and additional workers' compensation benefits. On the first Form AR-C, Counsel for the Claimant briefly described the cause of injury and the part of body injured as follows: "Claimant was rear-ended by a dump truck and sustained injuries to his head, neck, back, and other whole body." There is a notation on the second Form AR-C, which states that it was filed for the purpose of tolling the statute of limitations. However, in addition to the above bodily injuries, Counsel asserted that the Claimant also sustained an injury to his left shoulder.

On or about August 5, 2019 the Respondents filed a Form AR-2 with the Commission accepting this as a medical only claim.

This matter was scheduled for a full hearing on October 6, 2021, in El Dorado, Arkansas. However, on October 1, 2021, the Respondents' attorney sent an e-mail to the Commission saying that a hearing was no longer needed because the parties had tentatively resolved this matter by way of an Agreed Order. Therefore, said hearing was canceled that same day. The parties executed an Agreed Order which was approved by the Commission on October 12, 2021.

Subsequently, on December 15, 2021, the Claimant's former attorney filed a motion to withdraw from representing the Claimant in this matter. The Full Commission entered an order on December 21, 2021 granting the Claimant's attorney motion to withdraw from representing him in this workers' compensation claim.

On December 28, 2021, the Respondents filed with the Commission a motion to dismiss due to a lack of prosecution.

Therefore, on January 6, 2022, the Commission sent a letter to the Claimant informing him of the motion, with a deadline of January 27, 2022 for filing a written objection. Information received by the Commission from the United States Postal Service shows that on February 2, 2022 this item was delivered to the Claimant's home and left with an individual.

Yet, there has been no response from the Claimant.

Ultimately, on January 31, 2022, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for March 15, 2022, on the Respondents' motion to dismiss. Information received by the Commission from the United States Postal Service shows that on February 8, 2022 this item was delivered to the Claimant's home and left with him.

Said hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. During the hearing, counsel for the Respondents essentially moved that the claim be dismissed due to a lack of prosecution. The Claimant did not appear at the hearing to object to his workers' compensation claim being dismissed.

Discussion

The applicable law and Commission Rule are outlined below.

Specifically, Ark. Code Ann. §11-9-702 (Repl. 2012) reads:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

Commission Rule 099.13 reads:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed

except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

My review of the record shows that as of October 2021, no bona fide action has been taken by the Claimant to pursue this claim. Hence, since this time, the Claimant has failed to make a request for a hearing with respect to said claim. Furthermore, the Claimant has also failed to respond to the notices of this Commission and has not objected to his claim being dismissed.

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 this claim should be granted pursuant to Rule 099.13. This claim is hereby dismissed without prejudice, to the refiling of it within the limitation period specified by law. Therefore, a ruling pursuant to Ark. Code Ann. §11-9-702 (Repl. 2012) has been rendered moot and not addressed herein.

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 parties were provided reasonable notice of the motion to dismiss and hearing thereon.

3. The evidence preponderates the Respondents' motion to dismiss due to want of prosecution is warranted.
4. That the Respondents' motion to dismiss is hereby granted pursuant 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 Rule 099.13, this claim is hereby dismissed without prejudice, to the refiling of it within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge