

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H303330

ALMA HICKS,
EMPLOYEE

CLAIMANT

HAMBURG JR. HIGH SCHOOL,
EMPLOYER

RESPONDENT

AR SCHOOL BOARDS ASSOC. WCT,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED OCTOBER 22, 2024

Hearing held before Administrative Law Judge Chandra L. Black, in El Dorado, Union County, Arkansas.

The Claimant, pro se, appeared at the hearing.

Respondents represented by the Honorable Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

This matter comes before the Commission pursuant to the Motion to Dismiss filed by the Respondents. A hearing on the motion was conducted on September 4, 2024, in El Dorado, 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 record consists of September 4, 2024, hearing transcript and exhibits. In that regard, Commission's Exhibit No. 1 includes three actual pages, which has been marked accordingly, and Respondents' Exhibit 1 consisting of ten numbered pages was marked as thus so.

The Claimant, Ms. Alma Hicks appeared for the hearing and gave testimony.

Reasonable notice of the dismissal hearing was had on all the parties in the manner set by applicable law.

Background

The record reflects the following procedural history:

The Claimant's former attorney filed a Form AR-C, with the Commission on May 23, 2023, alleging that the Claimant sustained an accidental injury on March 14, 2023, while working for Hamburg Jr. High School. According to this form, the Claimant allegedly sustained injuries to her face and head while moving a desk. The Claimant's former attorney requested only additional benefits.

The Respondents initially filed a Form AR-2 with the Commission accepting this as a medical only claim. Subsequently, the Respondents filed an amended Form AR-2 filed on September 18, 2023, accepting the claim as being compensable and paid some medical benefits and temporary total disability compensation in this matter.

The Claimant's attorney requested to withdraw from representing the Claimant in this matter. On June 25, 2024, the Full Commission entered an order allowing the Claimant's attorney to withdraw from representing the Claimant in his case.

Since the filing of Form AR-C, the Claimant has failed to pursue her claim for additional workers' compensation benefits. Hence, the Claimant failed to make a bona fide request for a hearing on this matter.

The Respondents filed with the Commission on July 8, 2024, a Motion to Dismiss for Failure to Prosecute, along with a Certificate of Service to the Claimant.

On July 12, 2024, my office wrote to the Claimant and requested a response to the motion within twenty days. The letter was sent by first-class and certified mail to the address listed by the Claimant with the Commission.

A dismissal hearing notice was sent to the parties on August 2, 2024, scheduling the hearing for September 4, 2027, at 9:30 a.m. at the Union County Courthouse, in El Dorado. Said notice was sent to Claimant by first-class and certified mail at the same address as before. Per tracking information received from the United States Postal Service, the dismissal hearing notice sent via certified mail was delivered to the Claimant on August 5, 2024. The first-class letter was not returned. Thus, the evidence preponderates that the Claimant received proper notice of the dismissal hearing.

In the case at the bar, a hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. The Claimant also appeared at the hearing. The Respondents appeared at the hearing through their lawyer. Counsel argued for dismissal of this case because the Claimant has not sought any type of bona fide hearing since the filing of the Form AR-C in May of 2023. Specifically, counsel moved for dismissal of this claim under the authority of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13. However, the Claimant requested that her claim not be dismissed at this time. Specifically, she indicated that she has experienced some personal challenges and been unable to prosecute her claim. However, the Claimant indicated that she intends to pursue her claim for additional workers' compensation benefits in the near future.

Discussion

In that regard, Ark. Code Ann. §11-9-702(d) provides:

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.

AWCC 099.13 reads:

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.

As the moving party, Respondents under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012) must prove their entitlement to the relief requested—dismissal of this matter—by a preponderance of the evidence. This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

With respect to the evidence recounted above, (1) the parties were provided reasonable notice of the Motion to Dismiss and the hearing on it; and (2) the Claimant has failed to pursue her claim because she has taken no further action in pursuit of it since the filing of her claim for additional benefits on May 23, 2023. However, the Claimant appeared at the dismissal hearing and asked that her claim not be dismissed because she intends to pursue her claim.

After considering the evidence before me, I find that the Respondents' motion to dismiss this claim due to a lack of prosecution to be well taken. However, I find that the dismissal of this claim should be denied at this time because the Claimant has indicated that she intends to pursue

additional benefits in this matter. Accordingly, the Respondents' motion to dismiss this claim is hereby respectfully denied.

Of note, during the hearing, the Claimant was cautioned that failure to prosecute her claim could result in it being dismissed.

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. Reasonable notice of the motion to dismiss and hearing was had on all the parties.
3. The Respondents' motion to dismiss is hereby respectfully denied.

ORDER

In accordance with the foregoing findings of fact and conclusions of law set forth above, the Respondents' Motion to Dismiss for Failure to Prosecute is hereby respectfully denied at this time.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge