

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H000573

CHARLES HILLIARD, EMPLOYEE	CLAIMANT
MCLARTY NISSAN OF BENTON, EMPLOYER	RESPONDENT
CENTRAL ARKANSAS AUTMOBILE DEALERS/ RISK MANAGEMENT RESOURCES, INSURNACE CARRIER/THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED JUNE 14, 2021

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

Claimant, pro se, not appearing.

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

STATEMENT OF THE CASE

A hearing was held on the Respondents' Motion to Dismiss for Failure to Prosecute, on June 9, 2021 in the above-styled claim pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), for a determination of whether said claim should be dismissed due to the Claimant's failure to 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 transcript of the June 9, 2021, hearing. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

BACKGROUND

In the case at bar, the Claimant has filed two Form ARCs for the same incident. Specifically, the record reflects the following procedural history:

On January 29, 2020, the Claimant filed a Form AR-C with the Commission, for a claim of initial and additional workers' compensation benefits. The Claimant wrote that he sustained an injury to his right shoulder on December 23, 2019, while stacking tires.

It appears that on or about February 3, 2020, the Respondents filed a Form AR-2 with the Commission accepting the within claim as being a compensable work-related injury.

The Commission's Medical Cost Containment Administrator entered a Change of Physician Order in this claim on February 3, 2020. The Commission approved for the Claimant to change from treating with Dr. Charles Pearce to treat with Dr. Ethan Schock.

The Claimant retained legal counsel to represent him in this matter on or about March 9, 2020. At that time, the Claimant's attorney filed another Form AR-C, with the Commission for the same accidental incident of December 23, 2019, as noted above. However, the following description was given of the Claimant work-related incident: "Claimant was moving tires when he felt pain his right shoulder. Claimant sustained injury to his right shoulder, right, arm, and other whole body." Per said form, the Claimant again requested both initial and additional workers' compensation benefits.

On March 10, 2020, Ms. Charlotte Flanagan, the claims specialist for the Respondents, wrote the following letter, to the Commission:

Dear Mr. Bayne:

This letter is in reply to the AR-C filed by Laura Beth York on behalf of her client, Charles Hilliard [the Claimant]. This is a compensable lost time injury to the right upper arm and right shoulder and all reasonable and related benefits are being paid.

Please feel free to contact us should you have any questions.

Subsequently, on August 31, 2020, the Claimant's attorney filed a motion to withdraw from representing the Claimant in this matter. The Commission entered an order on September

16, 2020, granting the Claimant's attorney motion to withdraw as counsel of record in this matter.

However, there was no action taken by the Claimant to prosecute his claim.

On April 20, 2021, Ms. Flanagan, wrote the following letter to the Commission: "There has been no activity on the above captioned file since July 2020. We are requesting that this case be dismissed..."

The Commission sent a notice to the Claimant on April 23, 2021, informing him of the Respondents' motion, with a deadline of May 14, 2021, for filing a written objection to the motion.

However, there was no response from the Claimant.

Therefore, on May 18, 2021, the Commission sent a Hearing Notice to the parties informing them that the matter was set for a hearing on the Respondents' motion. Said hearing was scheduled for June 9, 2021, at the Arkansas Workers' Compensation Commission, in Little Rock.

Still, there was no response from the Claimant. Information obtained by the Commission from the United States Postal Service shows that both notices were delivered to the Claimant's last known address of record with the Commission.

Nevertheless, said dismissal hearing was in fact conducted on the Respondents' request for dismissal of the within claim due to a lack of prosecution. The Claimant failed to appear for the hearing. However, counsel for the Respondents appeared for the hearing. During the hearing, counsel for the Respondents noted that they accepted this claim, for which indemnity and medical benefits have paid. It appears that the Respondents are not currently paying any benefits to or on behalf of the Claimant. The last payment of medical benefits occurred in July 2020. However, since the filing of the Form AR-Cs, the Claimant has failed to request a hearing on the merits. As

a result, counsel for the Respondents requested that the claim be dismissed pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13.

DISCUSSION

The applicable law and Commission Rule are outlined below.

Specifically, Ark. Code Ann. §11-9-702(d) 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)

A review of the evidence shows that the Claimant has had ample time to pursue his claim for additional workers' compensation benefits, but he has failed to do so. Specifically, the Claimant has not requested a hearing or otherwise attempted to prosecute his claim for workers' compensation benefits since the filing of the Form AR-Cs, and nor has he resisted the dismissal request.

Therefore, after careful consideration of the evidence before me, I find the Respondents' request for dismissal to be well taken. I further find that under the provisions of Ark. Code Ann.

§11-9-702 (d), and Commission Rule 099.13, this claim (both Form AR-Cs) for workers' compensation benefits should be dismissed without prejudice to the refiling within the specified 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 (Repl. 2012).

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The Claimant sustained an admittedly compensable injury on December 23, 2019, for which he filed two Form AR-Cs as outlined above.
3. Subsequently, there was no bona fide action taken by the Claimant to prosecute his claim.
4. Ultimately, on April 20, 2021, the Respondents asked that the Commission, dismiss the within claim due to a lack of prosecution.
5. The Commission gave the Claimant written notice of the motion. There was no response from Claimant. Ultimately, the Commission held a hearing on the Respondents' motion.
6. Appropriate notice of the hearing was attempted on all the parties in the manner as prescribed by law to their last known address. However, the Claimant failed to appear for the hearing.
7. The Claimant has had ample time to prosecute his claim for workers' compensation benefits, but he has failed to do so. Moreover, the Claimant has failed to respond to the written notices of this Commission; and has not objected to the dismissal.
8. That the Respondents request for dismissal should be granted pursuant to Ark. Code Ann. §11-9-702 (d) and Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period. This dismissal applies to both Form AR-Cs.

ORDER

In accordance with the foregoing Findings and Conclusions of Law, I have no alternative

but to dismiss this claim for workers' compensation benefits. The within claim (both Form AR-Cs) is hereby respectfully dismissed pursuant to Ark. Code Ann. §11-9-702 (d) and Rule 099.13, without prejudice to the refiling of this matter within the specified limitation period.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge