

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H001348

SHAWN HOLLOMAN, EMPLOYEE

CLAIMANT

UNITED PARCEL SERVICE, INC., EMPLOYER

RESPONDENT

**LM INSURANCE CORPORATION/LIBERTY
MUTUAL GROUP, CARRIER/TPA**

RESPONDENT

OPINION FILED JANUARY 6, 2021

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Pulaski County, Little Rock, Arkansas.

Claimant, Mr. Shawn Holloman, *pro se*, failed to appear at the hearing.

Respondents were represented by Mr. David C. Jones, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on January 6, 2021, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. § 11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

The record consists of the transcript of the January 6, 2021, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated herein by reference.

DISCUSSION

On March 4, 2020, Claimant's attorney of record at the time filed a Form AR-C with the Commission. Per this form, Claimant alleged that he sustained a compensable injury to his low back on January 23, 2020, while working for the respondent-employer. Specifically, the following

description was stated for Claimant’s accidental injury: “Claimant was unloading packages onto a conveyor belt and one of the packages fell and struck him in his low back. Claimant sustained injuries to his low back, and other whole body.” Per the Form, Claimant asserted his entitlement to both initial and additional benefits.

On March 6, 2020, respondent-insurance-carrier filed a Form AR-2 with the Commission. They accepted the claim as a medical only claim.

It is noted from the file that Claimant was previously represented by counsel, Ms. Laura Beth York. By letter to the Commission dated May 4, 2020, Ms. York requested to withdraw as Claimant’s counsel. On June 11, 2020, the Full Commission issued an order granting Ms. York’s motion to withdraw.

Subsequently, there was no action taken by Claimant to prosecute his claim after the filing of the Form AR-C on March 4, 2020.

Therefore, on October 26, 2020, Respondents filed a Motion to Dismiss for failure to prosecute, a Brief in Support of Respondents’ Motion to Dismiss, and a Certificate of Service to Claimant. On October 30, 2020, the Commission sent a Notice to Claimant advising him of Respondents’ Motion to Dismiss and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated November 19, 2020, the Commission advised the parties that the matter had been set for a hearing on Respondents’ Motion to Dismiss for failure to prosecute. Said hearing was scheduled for January 6, 2021, at 10:00 a.m., at the Arkansas Workers’ Compensation Commission, Hearing Room “B,” 324 S. Spring Street, Little Rock, Arkansas. United States Postal Service records indicated that the Hearing Notice, sent via First-

Class Mail and Certified Mail to Claimant's address, was delivered on November 21, 2020, at 9:57 a.m., and a signature was obtained. Still, there was no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on the Respondents' Motion to Dismiss. Respondents appeared through their attorney; however, Claimant failed to appear at the hearing. At the hearing, Respondents' attorney advised that the carrier accepted the claim as a medical only claim; that all medical bills had been paid; and that Claimant had returned to work with Respondent-Employer. Counsel further noted that he and Ms. York had exchanged some discovery; however, she withdrew from the matter prior to completion of that discovery. Lastly, Counsel advised that since the filing of the Form AR-C on March 4, 2020, Claimant had failed to take any action to pursue his claim for workers' compensation benefits. As such, counsel requested that the claim be dismissed, with or without prejudice, pursuant to Ark. Code Ann. § 11-9-702, and our Rule 099.13.

A review of the evidence shows that Claimant has had sufficient time to pursue his claim for workers' compensation benefits. It has been more than ten (10) months since Claimant filed a Form AR-C in this matter, and to date, Claimant has not requested a bona fide hearing or otherwise attempted to prosecute his claim. Hence, Claimant has failed to timely prosecute his claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents' Motion Dismiss to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for benefits should be dismissed, without prejudice, to the refiling within the applicable time 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 March 4, 2020, Claimant's attorney of record at the time filed a Form AR-C with the Commission. Per this form, Claimant alleged that he sustained a compensable injury to his low back on January 23, 2020, while working for the Respondent-Employer.
3. On March 6, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission. They accepted the claim as a medical only claim.
4. More than ten (10) months have passed since Claimant filed a Form AR-C with the Commission. Since this time, Claimant has failed to make a bona fide request for a hearing or otherwise pursue his claim for workers' compensation benefits.
5. On October 26, 2020, Respondents filed a Motion to Dismiss for failure to prosecute.
6. Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no action has been taken by Claimant in furtherance of his claim, as he has failed to timely prosecute this matter.
7. Respondents' Motion to Dismiss for Failure to Prosecute is well founded.
8. Respondents' Motion to Dismiss for Failure to Prosecute should be granted pursuant to Ark. Code Ann. § 11-9-702, and Commission Rule 099.13, without prejudice, to the refiling of the claim within the applicable time period.
9. Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed pursuant to Ark. Code Ann. § 11-9-702, and Commission Rule 099.13, without prejudice, to the refiling of this claim within the applicable time period.

IT IS SO ORDERED.

**KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE**