

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H205427

CRYSTAL JACKSON-LIGHT, EMPLOYEE	CLAIMANT
GPM INVESTMENTS, LLC, EMPLOYER	RESPONDENT
ACE AMERICAN INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
HELMSMAN MANAGEMENT SERVICES, LLC, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED APRIL 15, 2024

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

The Claimant represented by the Honorable F. Matthew Thomas, III, Attorney at Law, El Dorado, Arkansas.

The Respondents represented by the Honorable Rick Behring, Jr., Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held on March 6, 2024, 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 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13. Of note, only the issue pertaining to the motion for dismissal due to a lack of prosecution was addressed during the hearing. The Respondents' Motion to Compel has been held in abeyance at this time.

Appropriate Notice of this hearing was tried on all parties to their last known address, in the manner prescribed by law. The Claimant waived her appearance at the hearing. No testimony was taken during the dismissal hearing.

The record consists of the transcript of the March 6, 2024, hearing and the documents held therein. Admitted into evidence was Respondents' Exhibit 1, pleadings, correspondence, unexecuted authorizations, discovery requests, and various other forms related to this claim, consisting of twenty-seven numbered pages. Additionally, in order to address adequately this matter under Ark. Code Ann. § 11-9-705(a)(1) (Repl. 2012)(Commission must "conduct the hearing . . . in a manner which best ascertains the rights of the parties"), and without objection, I have blue-backed to the record forms, pleadings, and correspondence from the Commission's file on the claim, consisting of twelve totaled pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, ___ S.W.3d ___, these documents have been served on the parties in conjunction with this opinion.

Background

The Claimant's attorney filed with the Commission a claim for Arkansas workers' compensation benefits on behalf of the Claimant by way of a Form AR-C, on October 16, 2023. According to this document, the Claimant alleged, among other things, that she sustained injuries during a motor vehicle accident to her whole body on July 21, 2022, while performing employment duties for the respondent-employer. Per the Claim Information section of this document, the Claimant's requested only initial workers' compensation benefits. Also, there is a handwritten note in this section, which reads, "All benefits due under the color of law."

Previously, on August 8, 2022, the respondent-carrier filed a Form AR-2 with the Commission confirming that they were challenging the claim. Particularly, the Respondents'

position for denying the claim included: “Tested positive for methamphetamines at initial hospital intake. The mere presence of alcohol or drugs creates a rebuttable presumption that the accident was substantially occasioned by the use of the drugs or alcohol.”

Subsequently, there was no activity on the claim.

As a result, on January 5, 2024, the Respondents filed with the Commission a Respondents’ Motion to Compel or Dismiss and Incorporated Brief in Support, which was accompanied by a Certificate of Service. Per this pleading, the Respondents served a copy of the foregoing pleadings on the Claimant’s attorney by e-mailing a copy thereof to his law firm.

The Commission sent a letter notice on January 10, 2024, to the Claimant and her attorney informing them of the Respondents’ motion. Said letter was mailed to the Claimant by both first-class and certified mail. Per this correspondence, the Claimant was given a deadline of twenty days for filing a written response to the Respondents’ motion to dismiss.

However, the United States Postal Service informed the Commission on January 22, 2024, that they were unable to deliver this item to the Claimant. On the contrary, the letter notice sent to the Claimant by first- class mail has not been returned to the Commission.

Nevertheless, there was no response from the Claimant or her attorney.

The Commission sent a Notice of Hearing dated February 1, 2024, to the parties letting them know that a dismissal hearing had been scheduled to address the Respondents’ motion to dismiss this claim due to a lack of prosecution. The notice was sent to the Claimant via certified and first-class mail. Said hearing was scheduled for February 1, 2024, at 10:00 a.m., in El Dorado, Arkansas.

On February 2, 2024, the Claimant’s attorney submitted a Motion to Withdraw from representing the Claimant in this matter. I entered an order on February 12, 2024¹ denying the Claimant’s attorney motion for withdrawal.

Tracking information received by the Commission from the United States Postal Service shows that on February 8, 2024, they returned the hearing notice sent to the Claimant by certified mail because it was “unclaimed.” However, the notice sent by first-class mail has not been returned to the Commission.

Still, there was no response from the Claimant until March 5, 2024. At that time, the Claimant sent an email to the Commission saying she had planned to attend the hearing but was unable to get transportation from Mississippi to El Dorado. The Claimant objected to her claim being dismissed and apologized for not being able to attend the hearing.

The following day, on March 6, 2024, a hearing was in fact conducted on the Respondents’ motion for dismissal as scheduled. As noted above, the Claimant did not appear at the dismissal hearing. However, the Respondents appeared through their attorney. The Claimant’s attorney also attended the hearing.

Counsel for the Respondents noted that the Claimant has failed to promptly prosecute her claim for workers’ compensation benefits. The Respondents attorney noted that there has been no attempt on the part of the Claimant to move forward with a hearing since the filing of the Form AR-C, which was done on October 16, 2023. Counsel indicated, among other things, that this claim should be dismissed, without prejudice due to all the afore reasons.

In the alternative, the Respondents counsel asked that the Commission enter an order to compel the Claimant to provide complete discovery responses and executed authorizations within

¹ There is a clerical error on my order denying the Claimant’s attorney Motion to Withdraw. The order states it was entered on *January 8, 2024*. Instead, the correct date for the order appears to be *February 12, 2024*.

an agreed amount of time and sanctions for the cost and expense of having to get her to participate. As previously noted above, the motion to compel has been held in abeyance and will not be addressed in this opinion.

During the hearing, the Claimant's attorney noted that the Claimant sent an e-mail to him on January 25, 2024, saying that she was terminating his services and no longer wanted him to represent her in this workers' compensation claim. This e-mail has been made a part of the record but has been heavily redacted due to the nature of some of the language. The Claimant's attorney forwarded this e-mail to the Commission after the hearing. His e-mail was sent on March 6, 2024, immediately following the dismissal hearing. Counsel for the Claimant asked that he be removed as attorney of record in this matter per the Claimant's request. The Claimant's attorney is hereby removed as counsel of record in this matter for the Claimant.

Regarding the motion for dismissal, Respondents at the hearing asked for a dismissal without prejudice because the Claimant has not requested a hearing since the filing of the Form AR-C, which was filed in October 2023. However, the Claimant authored an e-mail as noted above asking that her claim not be dismissed. Under these circumstances, based on my review of the documentary evidence, and all other matters before this Commission, I find that the dismissal of this claim is not warranted at this time. Accordingly, the Respondents' motion to dismiss this claim is hereby respectfully denied.

A word of caution to the Claimant, although Claimant has indicated that she wishes to pursue her claim, if she does not do so in a prompt manner, then the Respondents may renew their motion to dismiss this claim for a lack of prosecution.

I hereby ask that this file be reassigned to this office after the filing of the within opinion for the initiation of the prehearing process.

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 Respondents filed with the Commission a motion for dismissal of this claim, for which a hearing was held.
3. The Claimant has not requested a hearing since the filing of the Form AR-C in October 2023. Later, the Claimant objected to her claim being dismissed and indicated that she wishes to pursue her claim for workers' compensation benefits.
4. Appropriate Notice of the dismissal hearing was attempted on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' motion to dismiss this claim for a lack of prosecution is hereby respectfully denied at this time.
6. The Claimant's attorney is hereby relieved as counsel of record in this claim.

ORDER

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

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge