

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 OCTOBER 29, 2024

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

The Claimant, *pro se* did not appear.

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

Statement of the Case

A hearing was held on September 4, 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.

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

No testimony was taken during the dismissal hearing.

The record consists of the transcript of September 4, 2024, hearing and the documents held therein. In that regard, Commission’s Exhibit No. 1 includes three actual pages, which has been marked accordingly, and Respondents’ Exhibit 1 consisting of twenty-five numbered pages was marked as such.

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 to her whole body during a motor vehicle accident on July 21, 2022, while performing employment duties for the respondent-employer. Per the Claim Information section of this document, the Claimant asserted her entitlement to 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 this 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 this 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's motion for withdrawal as her counsel in this matter.

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

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*.

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 noted, among other things, that this claim should be dismissed, *without prejudice*, due to all the above 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 an agreed amount of time and sanctions for the cost and expense of having to get her to take part in the discovery process. As previously noted above, the motion to compel was held in abeyance at that time.

During this first hearing, the Claimant's attorney indicated 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 the language. Nevertheless, 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.

Regarding the motion, at the first dismissal hearing of March 6, 2024, the Respondents 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.

Following this first dismissal hearing, I found in an Opinion dated April 15, 2024, that under the circumstances, the dismissal of this claim was not warranted at that particular time. As a result, I found that the Respondents' motion to dismiss this claim was respectfully denied. At that time, the Claimant was given a word of caution that failure on her part to prosecute this claim might result in it being dismissed.

Subsequently, the Claimant did not prosecute her claim. Hence, there was no effort whatsoever on the part of the Claimant to try and resolve or pursue some type of resolution of her claim. Therefore, the Respondents renewed their motion to dismiss this claim for a lack of prosecution.

On July 17, 2024, my office sent the Claimant a letter giving her twenty days to respond to the motion to dismiss.

Still, there was no response from the Claimant.

A Notice of Hearing was also sent to the Claimant on July 17, 2024, setting the claim for a hearing on the renewed motion to dismissal for September 4, 2024, at 9:00 a.m. at the Union County Courthouse, in El Dorado. Said notice was sent to the Claimant by first-class and certified mail to the same address as before. This notice was returned to the Commission on July 24, 2024, as undeliverable. However, the first-class letter was not returned. Thus, the evidence preponderates that the Claimant received proper notice of the dismissal hearing.

Nevertheless, the second dismissal hearing was held as scheduled. The Respondents appeared through their attorney. The Claimant did not appear at the hearing. The Respondents' counsel argued that the Claimant has failed to prosecute her claim for workers' compensation benefits. He further noted that the Claimant has not taken any affirmative action to prosecute her claim in the last few months. More specifically, the Respondents' counsel essentially argued that the Claimant has not taken any bona fide action to advance her claim since the filing of the Form AR-C, which was done in October of 2023.

Therefore, the Respondents' attorney moved that this claim be dismissed pursuant to Commission Rule 099.13 *with or without prejudice* for both the initial and additional workers' compensation benefits filed for herein. Initial

A review of the evidence shows that the Claimant has had ample time to pursue her claim for workers' compensation benefits, but she has not done so, nor has she resisted the motion for dismissal. Here, the evidence preponderates that the Claimant has failed to timely prosecute this claim for workers' compensation benefits. Moreover, I am convinced that the Claimant has now abandoned her claim for benefits since she has taken no steps whatsoever to pursue any type of resolution in this matter, and she did not appear at the dismissal hearing.

Therefore, after consideration of the evidence before me, I find that the Respondents' motion to dismiss for a lack of prosecution to be well founded. I thus find that pursuant to Commission Rule 099.13, this claim for workers' compensation benefits should be dismissed *without prejudice* to the refiling within the limitation period specified under the Arkansas Workers' Compensation Act (the "Act"). Since I have granted the request for this claim to be dismissed under Commission Rule 099.13, the issue pertaining to the dismissal of it under Ark. Code Ann. §11-9-702 has been rendered moot and not discussed 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 Respondents filed with the Commission a renewed motion for dismissal of this claim, for which a hearing was held.
3. Appropriate notice of the dismissal hearing was tried on all parties to their last known address, in the manner prescribed by law.
4. The Respondents' renewed motion to dismiss this claim for a lack of prosecution is hereby granted *without prejudice* under Commission Rule 099.13.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim for workers' compensation benefits. This dismissal is per Rule 099.13, *without prejudice* to the refiling of this claim within the limitation period.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge