

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H106771

CHELSEA JOHNSON, EMPLOYEE	CLAIMANT
OUACHITA COUNTY MEDICAL CENTER, EMPLOYER	RESPONDENT
AHA WORKERS' COMPENSATION SIF, INSURANCE CARRIER	RESPONDENT
RISK MANAGEMENT RESOURCES, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED APRIL 16, 2024

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

The Claimant, pro se, did not appear at the hearing.

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

Statement of the Case

A hearing was held on February 7, 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 Arkansas Workers' Compensation Commission Rule 099.13. No testimony was taken at the hearing.

The record consists of the transcript of the February 7, 2024, hearing and the documents held therein. Admitted into evidence was Commission's Exhibit 1 consisting of three pages, which was marked accordingly, and the Respondents' Hearing Exhibit consisting of fifteen numbered pages was marked as Respondents' Exhibit 1. Additionally, in order to adequately address 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, four totaled pages which includes the Form AR-2 and the Full Commission’s order of July 11, 2023 relieving Claimant’s attorney as counsel of record in this matter from the Commission’s file of this claim. 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

On February 17, 2023, the Claimant’s attorney filed with the Commission a claim for Arkansas workers’ compensation benefits by way of a Form AR-C. The Claimant alleged that she sustained an injury to her lower back on November 3, 2021, while performing employment duties for the respondent-employer. Per this document, the Claimant said that her injury occurred while applying a wound VAC to a patient’s sacral area (she was adjusting and leaning), and as she turned a certain way, she felt a sharp pain on her left side. The Claimant’s attorney requested both initial and additional workers’ compensation benefits. In fact, he checked all the boxes for every conceivable benefit available under the law in connection with this claim.

On August 23, 2021, the Respondents filed a Form AR-2 with the Commission accepting this claim for a low back injury. The Respondents have paid both medical and indemnity benefits to and on behalf of the Claimant in this matter.

Since the filing of the Form AR-C, there was no request for a hearing filed by the Claimant in this matter.

The Claimant’s attorney filed with the Commission a Motion to Withdraw from representing the Claimant in this matter on June 29, 2023. The Full Commission entered an order

granting the Claimant's attorney motion to withdraw from representing her in this matter on July 11, 2023.

Since this time, there has been no bona fide action on the part of the Claimant to prosecute her claim for workers' compensation benefits, or otherwise pursue a resolution to this matter.

As a result, on November 29, 2023, the Respondents filed with the Commission a Respondents' Motion to Dismiss for Failure to Prosecute, along with a Certificate of Service. The Respondents notified the Claimant of their motion for dismissal by way of depositing a copy of the pleading thereof in the United States Mail.

The Commission sent a letter to the Claimant's last known address with the Commission on November 30, 2023, informing her of the Respondents' motion for dismissal. Said letter was sent via both first-class and certified mail. Per this correspondence, the Claimant was given a deadline of twenty days to file a written response to the Respondents' motion.

Tracking information from the United States Postal Service shows that on December 16, 2023, the above-mentioned certified letter was delivered to the Claimant's home and left with an individual. The Signature and Recipient section of this document shows that the Claimant signed for delivery of this correspondence. The proof of delivery receipt bears the Claimant's printed name and her signature. Moreover, the letter sent by first-class mail has not been returned to the Commission.

Yet, there was no response from the Claimant.

Therefore, pursuant to a Notice of Hearing dated January 4, 2024, the Commission notified the parties that a hearing was scheduled to address the Respondents' motion to dismiss this claim due to a lack of prosecution. Said dismissal hearing was scheduled for February 7, 2024, at 9:00 a.m., at the Union County Courthouse in El Dorado, Arkansas.

The hearing notice was sent to the Claimant via both first-class and certified mail. Tracking information received from the United States Postal Service shows that they were unable to find any delivery information in their records for this item. However, the hearing notice sent to the Claimant via first-class mail has not been returned to the Commission.

Still, there was no response from the Claimant.

Subsequently, a hearing was in fact conducted on the Respondents' motion for dismissal of this claim for a lack of prosecution as scheduled. The Claimant did not appear at the dismissal hearing, and she has not responded to the notices of this Commission. However, the Respondents appeared through their attorney and argued for dismissal of this claim due to a lack of prosecution.

The Respondents pointed out that there is no record of a hearing ever being requested in this matter. As a result, the Respondents made the dismissal request. Counsel for the Respondents also pointed out that the Claimant has failed to appear at the hearing and has not objected to her claim being dismissed. Therefore, the Respondents asked for dismissal without prejudice.

The record before me proves that the Claimant has failed to prosecute her claim for workers' compensation benefits. The Claimant has not ever requested a hearing since the filing of her claim. She did not appear at the hearing to object to her claim being dismissed and she has not responded to the notices of this Commission.

Under these circumstances, I am compelled to find that the evidence preponderates that the Claimant has abandoned her claim for workers' compensation benefits. Therefore, per Ark. Code Ann. §11-9-702 and Rule 099.13 of this Commission, I find that this claim should be and is hereby respectfully dismissed, *without prejudice* to the refiling of it with the limitation period specified by law.

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 due to a lack of prosecution, for which a hearing was held.
3. The Claimant has not ever requested a hearing since the filing of her claim via the Form AR-C, and she has objected to her claim being dismissed. Hence, the evidence preponderates that the Claimant has failed to prosecute 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 granted, *without prejudice*, per Ark. Code Ann. §11-9-702, and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed pursuant to Ark. Code Ann. 11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13, *without prejudice*, to the refiling of it, within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge