

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: H202246

TONY JOHNSON, EMPLOYEE	CLAIMANT
L&M MOWING SERVICE, LLC, EMPLOYER	RESPONDENT
MARKEL SERVICE, INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED JANUARY 5, 2023

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, in Little Rock, Pulaski County, Arkansas.

Claimant, pro se, not appearing.

Respondents represented by Mr. Randy P. Murphy, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for want of prosecution, on January 4, 2023, in this claim for workers' compensation benefits pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Specifically, the sole issue for determination was whether this claim should be dismissed due to the Claimant's failure to punctually prosecute it pursuant to the provisions of Ark. Code Ann. §11-9-702 (a)(4) (Repl. 2012) and/or Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was had on all parties in the manner prescribed by law.

The record consists of the hearing transcript from January 4, 2023. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

No testimony was taken at the hearing.

### **Procedural Background**

The record reflects the following procedural history:

The Claimant filed a Form AR-C with the Commission in the above-styled claim on March 17, 2022. Per this document, the Claimant asserted that he sustained an accidental injury while working for the respondent-employer on December 3, 2022. Specifically, the Claimant asserted in this document that he was involved in an accidental injury at work when he fell off a tractor. The Claimant's fall allegedly caused an injury to his left leg, which resulted in him having to undergo surgery. At that time of the filing of the Form AR-C, the Claimant requested both initial and additional benefits. Specifically, the Claimant requested initial benefits in the form of temporary partial disability, medical expenses, and strangely enough for attorney fees. However, there is no indication in the record that the Claimant is a licensed attorney; or that he has retained a lawyer to represent him in this matter. Also, pursuant to this form the Claimant claimed his entitlement to additional rehabilitation benefits.

On March 25, 2022 the Respondent-insurance carrier filed a Form AR-2 with the Commission. Per this document, the carrier denied this claim on the grounds that "Claimant did not sustain an injury arising out of the course and scope of his employment."

Since the filing of the Form AR-C in March 2022, there has been no action taken on the part of the Claimant to prosecute his claim for workers' compensation benefits.

Therefore, on November 7, 2022, the Respondents filed with the Commission a Motion to Dismiss for Failure Prosecute. On that same day, the Respondents served a copy of the foregoing pleading on the Claimant by way of mailing it via the United States Postal Service.

Subsequently, on November 8, 2022 I sent a letter to the Claimant informing him of the motion, with a deadline of November 28, 2022 for filing a written objection. On November 10, 2022, the Postal Service delivered this item to the Claimant by leaving a copy of it at his residence. The electronic return receipt bears the Claimant's signature for delivery of this parcel of mail.

However, there was no answer from the Claimant.

On December 5, 2022, a Notice of Hearing was issued. It was sent via certified mail to the parties letting them know that a hearing on the Respondents' motion for dismissal was scheduled for January 4, 2023 in Little Rock, Arkansas. In the regard, on December 17, 2022, the Postal Service delivered the Hearing Notice to the Claimant's home. The electronic return receipt shows that the Claimant signed for delivery of the Notice.

To date, there has been no reply from the Claimant.

A hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. The Claimant did not appear at the hearing to object to his workers' compensation claim being dismissed. However, the Respondents' attorney appeared for the hearing.

During the hearing, counsel moved that this claim be dismissed due to a lack of prosecution. Counsel specifically asked that the dismissal be made under the provisions of Ark. Code Ann. §11-9-702 and Commission Rule 099.13. The applicable law and Commission Rule are set forth below.

### **Discussion**

In that regard, Ark. Code Ann. §11-9-702(a)(4) (Repl. 2012) reads:

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within the limitation periods specified in subdivisions (a)(1)-(3) 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)

My review of the record shows that more than six (6) months have elapsed since the Claimant filed the Form AR-C in his assertion for workers' compensation benefits. In fact, it has been almost ten (ten) months since the filing of the Form AR-C, which was done in March 2022. However, since this time, the Claimant has failed to make a bona fide request for a hearing with respect to his claim for compensation. The Claimant has not responded to the Notices of this Commission. Moreover, the Claimant did not appear at the hearing to object to his claim being dismissed.

Therefore, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motion to dismiss this claim is well founded under Ark. Code Ann. §11-9-702 (a)(4) (Repl. 2012) and Commission Rule 099.13. Accordingly, this claim is respectfully dismissed without prejudice, to the refiling of it within 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. Reasonable notice of the dismissal hearing was attempted on all the parties in the manner prescribed by law.
3. The evidence preponderates that the Respondents' Motion to Dismiss for Failure to Prosecute is warranted.
4. That the Respondents' motion is hereby granted pursuant to Ark. Code Ann. §11-9-702 (a) (4) (Repl. 2012) and Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period.

**ORDER**

Based on the foregoing findings of fact and conclusions of law, this claim is respectfully dismissed without prejudice under Ark. Code Ann. §11-9-702(a)(4) and Rule 099.13, to the refiling of it within the limitation period specified by law.

**IT IS SO ORDERED.**

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CHANDRA L. BLACK  
Administrative Law Judge