

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H303479

KEITH J. JUSTICE,
EMPLOYEE

CLAIMANT

J SQUARE, INC.,
EMPLOYER

RESPONDENT

ACCIDENT FUND INSURANCE,
CARRIER/THIRD PARTY ADMINISTRATOR(TPA)

RESPONDENT

OPINION FILED MARCH 21, 2025

Hearing held before Administrative Law Judge Chandra L. Black, Little Rock, Pulaski County, Arkansas.

Claimant represented by the Honorable Kenneth A. Olsen, Attorney at Law, Bryant, Arkansas. Mr. Olsen did not attend the hearing

Respondents represented by the Honorable Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on March 19, 2025, 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/or 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.

No testimony was taken.

The record consists of the transcript of March 19, 2025, hearing and the documents held therein. The Commission's Exhibit consists of thirteen (13) pages of various pleadings, letters, and tracking information which was provided to the Commission by the United States Postal

Service. It was marked accordingly. Respondents' Exhibit 1 consists of eighteen (18) pages of pleadings, correspondence, and various other forms related to this claim.

Procedural History

On May 30, 2023, the Claimant filed with the Commission a claim for Arkansas workers' compensation benefits on his own behalf via a Form AR-C. Per this document, the Claimant alleged that he sustained multiple injuries during the course and in the scope of his employment with the respondent-employer, on July 29, 2022. The Claimant requested both initial and additional benefits. In fact, he checked off all the boxes for every conceivable workers' compensation benefit under the law.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on June 23, 2023. Per this form, the Respondents stated that they did accept this claim as a compensable claim for J Square, LLC.

The Claimant retained legal representation in this matter on or about June 21, 2023.

Since this time, and the filing of the claim in May 2023, the Claimant has not tried to pursue or otherwise resolve his claim, nor has he made a bona fide request for a hearing since the filing for the Form AR-C more than six (6) months ago.

Therefore, on March 4, 2023, the Respondents filed a Respondents' Motion to Dismiss with the Commission.

On or about March 18, 2024, the Claimant's attorney objected to the motion to dismiss and asked for a hearing. Therefore, I held the motion in abeyance and the prehearing process was started. Therefore, on April 19, 2024, the claim was scheduled for a prehearing telephone conference with the parties for May 15, 2024. At the time of the prehearing telephone conference, the parties stated that discovery had not been completed and asked that the claim be returned to

the Commission's general files. This was done. Since that time, there has been no bona fide action taken on the part of the Claimant to proceed with a hearing.

Therefore, on January 6, 2025, the Respondents filed a Respondents' Renewed Motion to Dismiss with the Commission, along with a certificate of service to the Claimant's attorney. Hence, the Respondents forwarded a copy of said motion to the Claimant's attorney via email.

My office sent a letter to the Claimant on January 15, 2025, informing the Claimant, and his attorney of the Respondents' Renewed Motion to Dismiss, and a deadline of twenty (20) days for filing a written response. This letter was sent to the Claimant via first-class and certified mail. Information received by the Commission from the United States Postal Service on January 18, 2025, confirms that they delivered the item to the Claimant's residence, and left it with an individual. The recipient's signature recorded on this document is illegible. However, the notice sent by first-class mail has not been returned to the Commission. Moreover, the letter-notice was sent to the Claimant's attorney via email, and the United States Postal Service. Yet, there has been no response from the Claimant's attorney or the Claimant.

Subsequently, in a Hearing Notice dated February 5, 2025, my office notified the parties that this claim had been set for a hearing on the Respondents' most recent motion to dismiss. Said dismissal hearing was scheduled for March 19, 2025, 10:00 a.m., with the hearing being held at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas. My office sent this notice to the Claimant via first-class mail and certified mail.

Tracking information received from the Postal Service shows that the item/notice of hearing was delivered to the Claimant's residence and left with an individual on February 8, 2025. The Signature of Recipient section of this document bears a signature, but it too is illegible. However, the notice sent via first-class mail has not been returned to the Commission. Likewise,

my office forwarded a copy of the notice of hearing to the Claimant's attorney by way of an email, and the United States Postal Service. Thus far, there has been no response from the Claimant's attorney or the Claimant.

Based on the foregoing, the evidence preponderates that both the Claimant and his attorney received notice of the dismissal hearing.

On March 19, the dismissal hearing was held as scheduled. The Claimant's attorney did not attend the hearing. Nor did the Claimant appear at the hearing. Nevertheless, the Respondents' attorney appeared at the hearing and argued that the Claimant has failed to prosecute his claim for workers' compensation benefits. More specifically, the Respondents' attorney noted that the Claimant has not taken any action to advance his claim in over a year. Counsel further argued, among other things that the Claimant and his attorney have not objected to the claim being dismissed. Therefore, the Respondents' attorney moved that this claim be dismissed without prejudice pursuant to Ark. Code Ann. §11-9-702, and/or Commission Rule 099.13.

ADJUDICATION

Therefore, the statutory provisions and Arkansas Workers' Compensation Rule applicable in the Respondents' renewed request for dismissal of this claim are outlined below:

Specifically, Ark. Code Ann. §11-9-702(a)(4) states:

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 refileing of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

Ark. Code Ann. §11-9-702(d) provides:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refileing of the claim within the limitation period specified in subsection (b) of this section.

Furthermore, 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)

A review of the evidence shows that the Claimant has had ample time to pursue his claim for workers' compensation benefits, but he has failed to do so. Specifically, the Claimant has not requested a hearing or otherwise made any effort to prosecute his claim for workers' compensation benefits within the last six (6) months ago. Nor has the Claimant or his attorney resisted the renewed motion for dismissal of this claim despite having received notice of the hearing. Hence, the evidence preponderates that the Claimant has clearly failed to prosecute this claim. Furthermore, considering all the foregoing, I am convinced that both the Claimant and his attorney have abandoned this claim.

Therefore, after consideration of the evidence before me, I find that the Respondents' renewed motion for dismissal of this claim for a lack of prosecution to be well founded. I thus find that pursuant to Ark. Code Ann. § 11-9-702(a)(4) and (d), along with Commission Rule 099.13, this claim for initial and additional workers' compensation benefits should be and is hereby respectfully dismissed *without prejudice* to the refile of it within the limitation periods specified under the Arkansas Workers' Compensation Act (the "Act").

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. 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 had on all parties to their last known address, in the manner prescribed by law.
4. The evidence preponderates that the Respondents' Renewed Motion to Dismiss this claim for a lack of prosecution is well founded, and should be hereby granted, *without prejudice*, per Ark. Code Ann. §11-9-702(a)(4) and (d), and Commission Rule 099.13, to the refiling of it within the limitation periods specified by law.

ORDER

Based upon the foregoing findings, I have no alternative but to dismiss this claim for workers' compensation benefits. This dismissal is made pursuant to the provisions of Ark. Code Ann. §11-9-702(a)(4) and (d), and Commission Rule 099.13, *without prejudice* to the refiling of this claim within the limitation periods specified under the Act.

IT IS SO ORDERED.

Chandra L. Black
Administrative Law Judge