

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G900202

ANTHONY W. KELLY, EMPLOYEE

CLAIMANT

DUMAS SCHOOL DISTRICT, EMPLOYER

RESPONDENT

**ARKANSAS SCHOOL BOARDS ASSOCIATION,
CARRIER/TPA**

RESPONDENT

OPINION FILED AUGUST 11, 2021

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Pine Bluff, Jefferson County, Arkansas.

Claimant, Mr. Anthony Kelly, was represented by Mr. Steven McNeely, Attorney at Law, Jacksonville, Arkansas. Claimant did not appear at the hearing, and Mr. McNeely waived his appearance at the hearing.

Respondents were represented by Ms. Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 17, 2021, 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.

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

The record consists of the transcript of the June 17, 2021, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated by reference. Respondents' exhibit packet was identified as Respondents' Exhibit #1 and consisted of Respondents' Motion to Dismiss; the First Report of Injury; the Form AR-2; the Form AR-C; the November 13, 2019, Notice of the prehearing telephone conference; the December 5, 2019, Prehearing Order; the Commission's January 6, 2020, communication

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regarding relocation of the full hearing; the Commission's February 18, 2020, communication to the parties regarding cancellation of the full hearing; the January 4, 2021, Notice of Hearing on Respondents' Motion to Dismiss; Claimant's January 6, 2021, objection to Respondents' Motion to Dismiss and request for a hearing; the January 7, 2021, Order holding Respondents' Motion to Dismiss in abeyance and setting deadlines for filing prehearing questionnaires and exhibits; the April 12, 2021, communication from Claimant's attorney withdrawing Claimant's request for a full hearing; the April 12, 2021, communication from Respondents' attorney renewing the Motion to Dismiss; the Commission's April 13, 2021, Notice of cancellation of the full hearing; and Claimant's attorney's April 14, 2021, Motion to Withdraw as counsel for Claimant and a letter informing the Commission of the same. Respondents' Exhibit #1 was admitted into evidence.

DISCUSSION

On or about December 21, 2018, Claimant alleged that he sustained an injury to his low back while working for the Respondent-Employer.

On January 11, 2019, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission. The claim was denied as there was no evidence that Claimant sustained an injury in the course and scope of his employment.

On October 2, 2019, Claimant filed a Form AR-C with the Commission, alleging both initial and additional benefits. Per this form, Claimant asserted an accident date of December 21, 2018, and asserted his entitlement to workers' compensation benefits. On the Form AR-C, Claimant's cause of injury was described as: "School bus seat malfunctioned and injured [Claimant's] back."

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A hearing was set on February 28, 2020; however, Claimant requested a continuance, which was granted on February 18, 2020. Subsequently, there was no action taken by Claimant to prosecute his claim.

Thereafter, on November 30, 2020, Respondents filed, with the Commission, a Motion to Dismiss for Failure to Prosecute, along with a Certificate of Service to Claimant. On December 3, 2020, the Commission sent a Notice to Claimant advising him of Respondents' Motion and a deadline for filing a written response. In response, Claimant's attorney advised the Commission via e-mail on January 4, 2021, that he had not been able to reach Claimant and requested that the matter be scheduled for a hearing.

Pursuant to a Hearing Notice dated January 4, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for January 21, 2021, at 1:00 p.m., at the Jefferson County Courthouse, Quorum Courtroom, 101 W. Barraque Street, Pine Bluff, Arkansas. By way of a letter dated January 6, 2021, Claimant's attorney notified the Commission that he objected to the Motion to Dismiss and requested a full hearing on the matter.

Subsequently, an Order was entered on January 7, 2021, cancelling the hearing on the Motion to Dismiss, holding the Motion to Dismiss in abeyance, and setting forth the schedule for filing prehearing questionnaires.

Pursuant to a Hearing Notice dated March 10, 2021, the Commission advised the parties that the matter had been set for a hearing on April 23, 2021, at 11:00 a.m., in the McGehee Criminal Justice Facility Courtroom, 2412 Highway 65 North, McGehee, Arkansas. However, on April 12, 2021, Claimant's attorney informed the Commission that Claimant was withdrawing his hearing

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request; that Claimant wished to terminate his workers' compensation case due to health concerns; and that Claimant's attorney waived his appearance at a hearing on Respondents' Motion to Dismiss. Also, on April 12, 2021, by way of e-mail, Respondents renewed their Motion to Dismiss.

Pursuant to the Commission's April 13, 2021, Notice to the parties, the full hearing was cancelled, and Claimant was provided a deadline to inform the Commission if he still wanted a hearing on his claim. There was no response from Claimant.

Therefore, pursuant to a Hearing Notice dated May 5, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss on June 17, 2021, at 11:00 a.m., in the Federal Building, Room 3611, 100 East 8th Street, Pine Bluff, Arkansas. There was no subsequent response from Claimant.

Therefore, a hearing was in fact conducted as scheduled on Respondents' Motion to Dismiss for Failure to Prosecute. Respondents appeared through their attorney; however, Claimant and his attorney did not appear at the hearing.

Respondents' counsel advised that the case had previously been set for a hearing in February of 2020; however, a request for a continuance by Claimant was granted, and the case was returned to the Commission's general files on February 18, 2020. Thereafter, with no action being taken in the case since February of 2020, Respondents filed a Motion to Dismiss on November 30, 2020. At that time, it had been more than eight (8) months since Claimant had taken any action on his claim. There was no communication from Claimant until January 6, 2021, when he objected to the Motion to Dismiss. Thereafter, the prehearing process was reinitiated; however, prior to a full hearing scheduled on May 23, 2021, Claimant withdrew his hearing request. As such,

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Respondents renewed their Motion to Dismiss. Respondents' counsel advised that, while it had not been six (6) months since Claimant had withdrawn his latest hearing request, pursuant to Commission Rule 099.13, counsel requested that the claim be dismissed, without prejudice, based on Respondents' Motion to Dismiss and Claimant's withdrawal of his hearing request. Respondents also asserted that the claim could be dismissed under Ark. Code Ann. § 11-9-702, in that any request for a hearing was made more than six months ago, but the requests were ultimately withdrawn by Claimant.

A review of the evidence shows that Claimant has had sufficient time to pursue his claim for workers' compensation benefits. Here, Claimant's alleged work-related injury occurred on December 21, 2018, for which he filed a Form AR-C on October 2, 2019, with the Commission. The matter was scheduled for a hearing on two (2) occasions; however, at the first setting, Claimant requested a continuance, and at the second setting, Claimant withdrew his request for a hearing. In response to Respondents' renewed Motion to Dismiss, Claimant's attorney advised the Commission of Claimant's desire to terminate his workers' compensation case, and Claimant's attorney waived his appearance at the hearing. Claimant did not appear at the hearing.

Therefore, after consideration of the evidence presented, I find Respondents' Motion to Dismiss this claim to be well supported. Furthermore, I find that pursuant to Commission Rule 099.13, this claim for benefits should be dismissed for failure to prosecute. The dismissal is without prejudice.

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. Claimant alleged that on December 21, 2018, he sustained an injury to his low back while working for the Respondent-Employer.
3. On January 11, 2019, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission, denying the claim as there was no evidence that Claimant sustained an injury in the course and scope of his employment.
4. On October 2, 2019, Claimant filed a Form AR-C with the Commission seeking workers' compensation benefits in this matter.
5. The matter was set for hearing on February 28, 2020; however, Claimant requested a continuance, which was granted by the Commission on February 18, 2020.
6. On November 30, 2020, Respondents filed, with the Commission, a Motion to Dismiss for Failure to Prosecute.
7. On January 6, 2021, Claimant's attorney notified the Commission that he objected to the Motion to Dismiss and requested a full hearing on the matter. Pursuant to Claimant's hearing request, an Order was entered on January 7, 2021, holding the Motion to Dismiss in abeyance and initiating the prehearing process.
8. On April 12, 2021, Claimant's attorney informed the Commission that Claimant withdrew his request for a hearing; that Claimant wished to terminate his workers' compensation case due to health concerns; and that Claimant's attorney waived his appearance at any hearing on Respondents' Motion to Dismiss. Also, on April 12, 2021, Respondents renewed their Motion to Dismiss.
9. Claimant has had sufficient time to pursue his claim for workers' compensation benefits. Here, Claimant's alleged work-related injury occurred on December 21, 2018, for which he filed a Form AR-C on October 2, 2019, with the Commission. The matter was scheduled for a hearing on two (2) occasions; however, at the first setting, Claimant requested a continuance, and at the second setting, Claimant withdrew his request for a hearing. To date, Claimant has failed to prosecute his claim for workers' compensation benefits.
10. Respondents' Motion to Dismiss for Failure to Prosecute is well founded.

11. Respondents' Motion to Dismiss for Failure to Prosecute should be granted pursuant to Commission Rule 099.13 for failure to prosecute. This dismissal is without prejudice.
12. Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed pursuant to Commission Rule 099.13 for failure to prosecute. This dismissal is without prejudice.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE