

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H101583

SONJA KESEE,
EMPLOYEE

CLAIMANT

ABM INDUSTRIES, INC.,
EMPLOYER

RESPONDENT

ESIS, INC.,
INSURANCE CARRIER/THIRD PARTY
ADMINISTRATOR (TPA)

RESPONDENT

OPINION FILED JUNE 30, 2021

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

Claimant, pro se, not appearing.

Respondents represented by Mr. Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 9, 2021, a hearing was held on the Claimant's request to dismiss her claim for workers' compensation benefits, in the above-styled matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). The Respondents have joined in on this request for dismissal pursuant to provisions of Ark. Code Ann. §11-9-702 (Repl. 2012) and/or Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the transcript of the June 9, 2021 hearing and the documents contained therein. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

There was no testimony taken during the hearing.

DISCUSSION

The record reflects the following procedural history:

This claim involves an alleged work-related injury on January 18, 2021. It appears that on February 25, 2021, the Claimant wrote a letter to the Commission requesting a hearing on the within claim. The Claimant's request for a hearing was referred to the Commission's Legal Advisor Division.

The Respondents filed a First Report of Injury with the Commission on February 10, 2021 averring that the Claimant sustained a "contusion" on January 18, 2021. Per this document, the Claimant tripped and fell while going to the Dumpster. However, the Respondents also filed a Form AR-2 with the Commission on February 10, 2021 denying compensability on the grounds that the claim does not meet the criteria for a compensable injury per Arkansas statutes.

Per a memorandum dated March 22, 2021, a legal advisor noted that their attempt to set up a Legal Advisor Conference had failed. As a result, she returned the claim to the Clerk of the Commission for assignment of the claim to an administrative law judge for a hearing. This was done.

Preliminary Notices and Questionnaires were mailed to the parties on March 26, 2021. The parties made timely responsive filings.

On April 12, 2021, a Prehearing Telephone Conference was scheduled for April 28, 2021. Both parties participated in the telephonic conference. A Prehearing Order was entered that same day. Pursuant to said order, a hearing was scheduled for July 7, 2021, at 12:00 p.m., at the Union County Courthouse, in El Dorado. According to the Prehearing Order, the Claimant asserted her entitlement to temporary total disability compensation and medical benefits for injuries to multiple parts of her body.

Nevertheless, on May 12, 2021, the Claimant sent the following email to the Commission:

“To whom this may concern: I Sonja Kesee is requesting to withdraw my workers[sic] comp claim as of May 12, 2020[sic].”

Therefore, pursuant to a Hearing Notice dated May 17, 2021, the Commission notified (by way of Certified Mail) the parties that the matter had been set for a hearing on the Claimant’s motion to dismiss. This hearing was scheduled for June 9, 2021, at 11:00 a.m., in Little Rock, at the Arkansas Workers’ Compensation Commission. Information received by the Commission from the United States Postal Service shows that on May 21, 2021, they delivered this item to the Claimant’s last known address.

A hearing was in fact conducted on the Claimant’s request to have her claim dismissed as scheduled. The Respondents appeared for the hearing through their attorney. However, the Claimant did not appear at the hearing. Counsel for the Respondents’ attorney joined in on Claimant’s request for dismissal. Specifically, counsel for the Respondents moved that this claim be dismissed in light of the fact that the Claimant forfeited her right to the hearing; and she has abandoned her claim by her own motion to get rid of it. As such, counsel asked that this claim be dismissed pursuant to Commission Rule 099.13, with prejudice.

ADJUDICATION

In that regard, 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 evidence shows that the Claimant has had ample opportunity to pursue her claim for initial workers' compensation benefits but has decided not to do so. Therefore, after careful consideration of the evidence presented, and all other matters properly before the Commission, I find that the parties' joint request to dismiss this claim to be well taken. Therefore, pursuant to Commission Rule 099.13, this claim is hereby dismissed without prejudice to the refiling within the limitation period specified under Arkansas 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. On April 28, 2021, a Prehearing Order was entered in this claim. Pursuant to said order, this claim was set for a hearing on July 7, 2021, in the territory.
3. The Claimant wrote the Commission on May 12, 2021 asking that her claim be dismissed.
4. The Respondents have joined in on this request for dismissal-with prejudice.
5. That the parties' joint request to dismiss this claim is granted pursuant to Commission Rule 099.13, without prejudice to the refiling of the claim within the specified limitation period.

ORDER

In accordance with the foregoing Findings and Conclusions of Law, I have no alternative

but to dismiss this claim for workers' compensation benefits. This claim is hereby respectfully dismissed pursuant to Rule Commission 099.13, without prejudice to the refile of it within the specified limitation period.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge