

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H104378

BARBARA L. LEWIS, EMPLOYEE

CLAIMANT

CRESTPARK STUTTGART, LLC, EMPLOYER

RESPONDENT

**ARKANSAS SELF-INSURANCE TRUST/
CCMSI/CARRIER/TPA**

RESPONDENT

OPINION FILED FEBRUARY 18, 2022

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

Claimant, Ms. Barbara L. Lewis, *pro se*, failed to appear at the hearing.

Respondents were represented by Mrs. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on February 17, 2022, 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 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.

The record consists of the transcript of the February 17, 2022, 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.

DISCUSSION

On May 20, 2021, Claimant filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of April 23, 2021, and asserted her entitlement to initial

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workers' compensation benefits. On the Form AR-C, Claimant indicated that she slipped and fell injuring her head, neck, and mid-back while working for Respondent-Employer.

On June 3, 2021, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission accepting the claim as compensable.

On June 29, 2021, Claimant was granted a change of physician from Dr. Seth Maurice Kleinbeck to Dr. James Calhoun.

On November 22, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute, along with a Certificate of Service to Claimant. On November 29, 2021, the Commission sent a Notice to Claimant advising her of Respondents' Motion and a deadline for filing a written response. There was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated December 22, 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 February 17, 2022, at 1:15 p.m., at the Federal Building (Post Office Building), Room 3611, 100 East 8th Street, Pine Bluff, Arkansas. United States Postal Service records indicated that the Hearing Notice, sent via First-Class Mail and Certified Mail to Claimant's address, was delivered (recipient name: Ms. Barbara Lewis) but no signature was obtained. There was no response from Claimant in this regard.

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 failed to appear at the hearing.

Counsel advised that Claimant had not taken any action in the matter and had not sought any type of *bona fide* hearing before the Workers' Compensation Commission since she filed the

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Form AR-C. As such, Counsel requested that the claim be dismissed, with prejudice, pursuant to Ark. Code Ann. § 11-9-702 and our Rule 099.13.

A review of the evidence shows that Claimant has had sufficient time to pursue her claim for workers' compensation benefits. It has been approximately nine (9) months since Claimant filed a Form AR-C in this matter, and to date, Claimant has not requested a *bona fide* hearing or otherwise attempted to prosecute her claim. Hence, Claimant has failed to timely prosecute her claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents' motion for the dismissal of this claim to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for additional benefits should be dismissed, without prejudice, to the refile within the applicable time period.

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. On May 20, 2021, Claimant filed a Form AR-C with the Commission seeking initial workers' compensation benefits in this matter.
3. On June 3, 2021, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission accepting the claim as compensable.
4. On November 22, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute.
5. Approximately nine (9) months have passed since Claimant filed a Form AR-C, with the Commission. However, since this time Claimant has failed

to make a *bona fide* request for a hearing or otherwise resolve her claim for workers' compensation benefits.

6. Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no action has been taken by Claimant in furtherance of her claim, as she has failed to timely prosecute this matter.
7. Respondents' Motion to Dismiss for Failure to Prosecute is well founded.
8. Respondents' Motion to Dismiss for Failure to Prosecute should be granted pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of the claim within the applicable time period.
9. 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 Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of this claim within the applicable time period.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE