

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS.: G902187 & G904978

ROBERT E. LEWIS,
EMPLOYEE

CLAIMANT

TEXARKANA SCHOOL DISTRICT,
EMPLOYER

RESPONDENT

ARKANSAS SCHOOL BOARDS ASSN.,
INSURNACE CARRIER/TPA

RESPONDENT

OPINION FILED JANUARY 5, 2022

Hearing held before Administrative Law Judge Chandra L. Black, in Texarkana, Miller County, Arkansas.

Claimant, *pro se*, failed to appear at the hearing.

Respondents represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for lack of prosecution, on November 9, 2021, in this workers' compensation claim pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Here, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the hearing transcript of the November 9, 2021. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference. Respondents offered into evidence one exhibit, consisting of 51 numbered pages. Said exhibit has been marked as Respondents' Exhibit No. 1.

No testimony was taken at the hearing.

DISCUSSION

The above referenced matter involves two separate claims. The first incident occurred on August 17, 2018, which is AWCC Claim Number G902187. The second alleged incident occurred on October 10, 2018, which is AWCC Claim Number G904978.

With respect to the first claim, the Claimant filed a Form AR-C on April 9, 2019 with the Commission alleging that he sustained a compensable injury on August 17, 2018. Per this document, the Claimant alleged that he was involved in a motor vehicle collision, which resulted in injuries to the Claimant's left knee, right and left lower back and upper back. He further maintained that he sustained an injury "in October to his back at work while lifting." The Claimant marked all of the boxes for both initial and additional benefits.

The Respondents filed a Form AR-2 with the Commission on April 5, 2019 accepting the August 17, 2018 incident as a medical only claim. They accepted the claim as compensable for injuries to the Claimant's left knee and low back.

Subsequently, the Claimant retained legal counsel. On August 27, 2019, the Claimant's attorney filed a Form AR-C for the August 17, 2018 motor vehicle incident. Per this document, the Claimant asserted his entitlement to both initial and additional workers' compensation benefits.

Of note, on March 8, 2019, the Claimant obtained a Change of Physician Order to switch doctors for his first injury of August 17, 2018. The Commission granted the Claimant a change of physician for him to treat with Dr. Darius Mitchell.

With respect to the second claim of October 17, 2018, the Claimant's attorney filed a Form AR-C with the Commission on August 5, 2019. Per this document, the Claimant asserted his entitlement to both initial and additional workers' compensation benefits. Counsel for the Claimant

briefly described the cause of injury and the parts of body injured: “Claimant was assembling a bookcase when he felt pain in his low back, left hip, left knee, and other whole body.”

On August 20, 2019, the Respondents filed a Form AR-2 with the Commission controverting this claim. Specifically, Respondents wrote: “Incomplete investigation unable to verify injury, will amend once able to speak with patient, waiting to hear back from attorney.”

Subsequently, on July 22 2020 the Claimant’s attorney filed with the Commission, a motion to withdraw from representing the Claimant in the second claim (AWCC Claim Number G904978, which occurred October 17, 2018). On August 5, 2020, the Full Commission entered an Order relieving the Claimant’s attorney as counsel of record in said claim. It appears that on that same date, the Claimant’s attorney was also relieved as counsel of record for the Claimant in the first claim (AWCC Claim No. 902187), which occurred on August 17, 2018.

Since the filing of the Form AR-Cs, the Claimant has failed make a request for a hearing on the merits before the Commission in either of these claims.

Therefore, by way of separate letters/motions (a letter for each claim), the Workers’ Compensation Claims Adjuster, Melody Tipton, filed motions for dismissal with the Commission for both claims to be dismissed due to a lack of prosecution. Said motions were filed on November 2, 2020.

On that same date, the Commission sent a letter to the Claimant letting him know about the motion for dismissal of these claim, along with a deadline for filing a written objection.

The Respondents retained legal counsel. On December 3, 2020, counsel for the Respondents filed a letter/motion asking that these claims be dismissed for lack of prosecution of these claims.

In a Notice of Hearing dated December 4, 2020, this matter was set for a hearing on January 21, 2021 (There is a clerical error in the notice about the date of the hearing. It reads, “January 2020.” Instead, it should read “January 20, 2021”).

The Claimant wrote a letter to the Commission on or about January 13, 2021 objecting to his claims being dismissed. He indicated, among other things, that he intended to pursue both claims due to what amounted to the need for additional medical treatment.

As a result, per a letter dated January 19, 2021, the dismissal hearing was cancelled, and the Respondents’ motion was held in abeyance. Also, on that same day, Preliminary Notices and Questionnaires were mailed to the parties. Both parties were given deadlines for filing responses. The Respondents filed a timely Preliminary Notice and Questionnaire. However, the Claimant failed to comply.

Instead, the Claimant began corresponding with the Commission on February 10, 2021 via e-mail. He notified the Commission that he was still under medical care, and that he did not know how to complete the pleadings. The Claimant indicated that he needed additional time to obtain legal representation so he could comply with the pleadings. As a result, on February 23, 2021, these Claimant were returned to the Commission’s general files.

Still, there was no action taken on the part of the Claimant to prosecute these claims. Therefore, on June 14, 2021, the Respondents renewed their motion for dismissal.

On June 18, 2021 I wrote a letter to the Claimant letting him know about the motion for dismissal of these claims, along with a deadline for filing a written objection. Subsequently, these claims were scheduled for a hearing on July 20, 2021, in Little Rock. On or about July 7, 2021, the Claimant wrote to the Commission via e-mail, stating among other things, that he was in the

final stages of medical treatment for his injuries. He also indicated that he had retained an attorney. The Claimant also stated that he had a change of address and was not receiving his mail.

On July 12, 2021, the hearing scheduled for July 20, 2021 was canceled and the Claimant was given until August 2, 2021 to respond to the dismissal. The Claimant wrote a letter to the Commission on July 23, 2021, wherein among other things, he objected to his claims being dismissed. Pursuant to this communication, on July 27, 2021, I returned these claims to the Commission's general files.

Still, there was no action taken by the Claimant to pursue his claims. On August 12, 2021, at the request of the Respondents, I entered an Order to Compel for the Claimant to complete responses to their discovery. However, the Claimant did not comply with said order.

The Respondents renewed their motion to dismiss on September 20, 2021. Therefore, on September 29, 2021 the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for Wednesday, at 10:00 a.m., on November 9, 2021, in Texarkana, on the Respondents' motion to dismiss. Information received from the United States Postal Service shows that they were unable to locate any delivery information on this item.

Nevertheless, a hearing was conducted before the Commission, on the Respondents' motion to dismiss as scheduled. During the hearing, counsel for the Respondents moved that these claims be dismissed due to a lack of prosecution. However, the Claimant failed to appear at the hearing to object to his claims being dismissed.

My review of the record shows that more than six (6) months have passed subsequent to the filing of the Form AR-Cs in this matter. However, since that time the Claimant has failed to make a bona fide request for a hearing with respect to his claims for workers' compensation

benefits. Hence, no probative action whatsoever has been taken by the Claimant to resolve or pursue his claims.

Under these circumstances, I am persuaded that the Claimant has had ample time to pursue these claims for benefits but failed to do so. 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 the within claims should be granted pursuant to the provisions of Ark. Code Ann. §11-9-702 and Rule 099.13. Accordingly, these claims are hereby respectfully dismissed without prejudice, to the refiling of them 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. The Claimant and his former attorney filed Form AR-Cs in this matter. Since that time, the Claimant's attorney has been relieved as counsel of record in these claims.
3. Subsequently, the Claimant has failed to take any bona fide action to prosecute or resolve his claims for workers' compensation benefits.
4. Respondents have renewed their motion to dismiss these claims.
5. Notice of the dismissal hearing was tried on the parties.
6. The evidence preponderates that the dismissal for want of prosecution is warranted.
7. That the Respondents' motion to dismiss is hereby granted pursuant to the provisions of Ark. Code Ann. §11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of these claims within the specified limitation period.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, I find that pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13, these claims are hereby respectfully dismissed, without prejudice, to the refiling within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge