

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H304848

MICHAEL LOOSIER,
EMPLOYEE CLAIMANT

CITY OF ASHDOWN,
EMPLOYER RESPONDENT

MUNICIPAL LEAGUE WORKERS' COMPENSATION
PROGRAM, THIRD PARTY ADMINISTRATOR/TPA RESPONDENT

OPINION FILED JULY 19, 2024

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

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

Respondents represented by the Honorable Mary K. Edwards, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on July 9, 2024, 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 (d), 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 July 9, 2024, hearing and the documents held therein. Additionally, in order to adequately address this matter under Ark. Code Ann. § 11-9-705(a)(1) (Repl. 2012)(Commission must "conduct the hearing . . . in a manner which best ascertains the rights of the parties"), and without objection, I have blue-backed correspondence from the Commission's file on the claim, consisting of one page. In accordance with *Sapp v. Tyson*

Foods, Inc., 2010 Ark. App. 517, ___ S.W.3d ___, this document has been served on the parties in conjunction with this opinion. Specifically, the documentation consists of an email that the Commission sent to the United States Postal Service regarding tracking information on the notices sent to the Claimant via certified mail, comprising of one page, which has been marked as Commission’s Exhibit 1¹; and the Respondents’ Non-Medical Exhibit Index has been marked accordingly, and it includes ten (10) pages of pleadings, the Form AR-C, and various other correspondence.

No testimony was taken.

Procedural History

On October 12, 2023, the Claimant’s attorney filed a Form AR-C with the Commission alleging that the Claimant sustained a compensable injury to his back during the course and in the scope of his employment with the respondent-employer on July 19, 2023. Specifically, per this document, the Claimant requested benefits in the form of additional temporary total disability, additional temporary partial disability, additional permanent partial, additional medical expenses, rehabilitation, and an attorney’s fee.

The respondent-insurance-carrier filed a Form AR-2, with the Commission on August 9, 2023, wherein they accepted compensability of the claim for an injury to the Claimant’s lumbar spine.

On October 20, 2023, the claims examiner wrote to the Commission saying, in relevant part: “... This claim was accepted. The First Report of Injury and Form AR-2 were previously filed with your office. Our position has not changed. Please advise if additional information is required.”

¹ This email has been blue-backed and made a part of the record of the transcript for the July 9, hearing.

The Claimant's attorney filed with the Commission a motion to withdraw from representing the Claimant in this matter on October 18, 2023. There being no objection to the motion for the Claimant's attorney to withdraw as counsel of record, the Full Commission entered an Order on November 2, 2023, granting the motion.

Since the filing of the Form AR-C, there has been no affirmative action taken on the part of the Claimant to prosecute his claim for workers' compensation benefit, or otherwise pursue any type of benefits. In fact, the Claimant has not ever filed a request for a hearing in this matter.

Therefore, on or about April 22, 2024, the Respondents filed a Respondents' Motion to Dismiss for Failure to Prosecute, with the Commission, along with a Certificate of Service to the Claimant. Per this documentation, the Respondents confirmed that they served upon the Claimant a true and correct copy of the above and foregoing pleading, which was sent to the Claimant by way of certified mail, return receipt requested on that same day, via the United States Postal Service. The Respondents received tracking documentation of the delivery information from the Postal Service that shows the Claimant received a copy of the Motion to Dismiss.

The Commission sent a letter to the Claimant on April 22, 2024, informing him of the Respondents' motion, and a deadline of twenty (20) days, for filing a written response. This notice was sent via first-class and certified mail by way of the Postal Service.

Information received by the Commission from the Postal Service on July 8, 2024, shows no proof of delivery for the recipient of this parcel of mail. However, the letter notice sent to the Claimant by first-class mail has not been returned to the Commission.

Yet, there was no response from the Claimant.

Pursuant to a Hearing Notice dated May 15, 2024, the Commission notified the parties that this matter had been set for a hearing on the Respondents' motion to dismiss. Said hearing was

scheduled for July 9, 2024, at 10:00 a.m., at the Miller County Juvenile Court Center, in Texarkana, Arkansas. This notice of the dismissal proceedings was sent to the Claimant via first-class and certified mail via the Postal Service.

Information received by the Commission from the Postal Service on July 8, 2024, shows that there was no proof of delivery for the recipient of the notice of hearing. However, the notice of hearing sent to the Claimant by first-class mail has not been returned to the Commission. Based on the foregoing, I find that the evidence before me preponderates that the Claimant received notice of the dismissal hearing.

Still, there was no response from the Claimant.

Nevertheless, a dismissal hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant did not appear at the hearing. However, the Respondents appeared through their attorney. The Respondents' attorney asserted that the Claimant has failed to prosecute his claim for workers' compensation benefits and that it should be dismissed for want of prosecution. Counsel further noted that the Claimant has not asked for a hearing since the filing of the Form AR-C, which was done more than six (6) months ago. Therefore, the Respondents' attorney essentially moved that this claim be dismissed without prejudice based on the timing of the events described above and the procedural history of the claim involving a lack of prosecution per Ark. Code Ann. §11-9-702, and/or Commission Rule 099.13.

Adjudication

The statutory provisions and Arkansas Workers' Compensation Rule applicable in this motion for dismissal of this claim are outlined below:

Specifically, 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 refiling of the claim within the limitation period specified in subsection (b) of this section.

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)

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 ever requested a hearing or otherwise tried to prosecute his claim for benefits since the filing of the Form AR-C, which was done more than six (6) months ago. Most notably, the Claimant has not responded to the Notices of this Commission, nor has he contested the dismissal request, and he did not appear at the hearing to object to his claim being dismissed.

Therefore, after consideration of the evidence before me, I find the Respondents' Motion to Dismiss to be well taken. Accordingly, pursuant to Ark. Code Ann. §11-9-702 (d), and Commission Rule 099.13, this claim for workers' compensation benefits is hereby dismissed *without prejudice* to the refiling of it within the limitation period specified by the applicable limitation 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. The Respondents filed with the Commission a motion to dismiss this claim, for want of prosecution for which a hearing was held.
3. The Claimant has not requested a hearing since the filing of the Form AR-C, which was done more than six (6) months ago. Hence, the evidence preponderates that the Claimant has failed to prosecute his claim for workers' compensation benefits based upon the relevant provisions of the specified statute, Ark. Code Ann. §11-9-702 (d), and Rule 099.13 of this Commission.
4. Appropriate Notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' motion for dismissal of this claim for want of prosecution is hereby granted, *without prejudice*, under Ark. Code Ann. §11-9-702 (d), and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim for additional benefits. This dismissal is hereby ordered pursuant to Ark. Code Ann. §11-9-702 (d), and Commission Rule 099.13, *without prejudice* to the refiling of this claim within the limitation period specified under the Act.

IT IS SO ORDERED.

Chandra L. Black
Administrative Law Judge