

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC NO.: H202913

DIANE LYBARGER, EMPLOYEE	CLAIMANT
RE-ENGINEERED BUSINESS SOLUTIONS, INC./, RBS, INC., EMPLOYER	RESPONDENT
NATIONAL UNION FIRE INSURANCE COMPANY, INSURANCE COMPANY	RESPONDENT
GALLAGHER BASSETT SERVICES, INC., THIRD PARTY ADMINSTRATOR (TPA)	RESPONDENT

OPINION FILED APRIL 3, 2023

Hearing before Administrative Law Judge Chandra L. Black, on March 31, 2023, in Hot Springs, Garland County, Arkansas.

Claimant represented by Ms. Laura Beth York, Attorney at Law, Little Rock, Arkansas. Ms. York waived her appearance at the hearing.

Respondents represented by Mr. Rick Behring, Jr., Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for want of prosecution, on March 31, 2023, in the above-styled claim pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). More specifically, 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 Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the March 31, 2023 hearing transcript and Respondents' Exhibit 1, which consists of thirteen (13) numbered pages. Also, the entire Commission's file was made a part of the record. It is hereby incorporated herein by reference.

Reasonable notice of the dismissal hearing was served on all the parties in the manner established by law.

No testimony was taken during the hearing.

BACKGROUND

The Claimant was involved in a work-related motor vehicle accident on April 8, 2022. On or about April 19, 2022 the respondent-insurance carrier filed a Form AR-2 with the Commission accepting this as a compensable claim. Per documents filed with the Commission by the Respondents' attorney, the Claimant was declared to be at maximum medical improvement and released with no work restrictions or impairment on October 25, 2022. As a result, the Respondents have taken the position that they have authorized and paid all appropriate medical benefits on this claim.

Conversely, the Claimant's attorney filed a Form AR-C with the Commission on July 6, 2022 in this matter. Per this document, the Claimant asserted her entitlement to both initial and additional workers' compensation benefits for "injuries to her sternum, ribs, pelvis, jaw, face, neck, back, and other whole body."

Since the filing of the Form AR-C, the Claimant has not requested a hearing before the Commission on the merits of her claim.

Therefore, on March 6, 2023, the Respondents filed with the Commission a Motion to Dismiss and Incorporated Brief in Support, along with a Certificate of Service to the Claimant's attorney.

On March 13, 2023, the Commission sent a notice to the Claimant's attorney and the Claimant notifying them of the Respondents' motion with a deadline of twenty (20) days for filing a written objection.

That same day, the Claimant's attorney wrote to the Commission, communicating her position regarding the motion. Specifically, she stated: "No objection to a motion to dismiss without prejudice."

On March 15, 2023, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for March 31, 2023 on the Respondents' motion.

DISCUSSION

Subsequently, a hearing was conducted before the Commission, on the Respondents' motion to dismiss as scheduled. During the hearing, counsel for the Respondents moved that the within claim be dismissed without prejudice due to a lack of prosecution. Specifically, counsel noted that the Claimant has not requested a hearing or had any activity on the claim since the filing of the Form AR-C. He also noted that all appropriate benefits have been paid to and on behalf of the Claimant.

My review of the entire record establishes that more than six (6) months have passed after the filing of the Form AR-C for a claim of workers' compensation benefits. However, since this time, the Claimant has failed to make with the Commission a bona fide request for a hearing with respect to her claim. Moreover, the Claimant does not object to her claim being dismissed without prejudice. Under these circumstances, I am persuaded that the Claimant has had ample time to pursue her claim for workers' compensation benefits, but she has failed to do so. Thus, the Claimant has failed to timely prosecute her claim.

Therefore, based on my review of the documentary evidence, and all other matters properly before this Commission, I find that the Respondents' motion to dismiss this claim should be and is hereby granted under Ark. Code Ann. §11-9-702 (Repl. 2012), and Commission Rule 099.13.

Accordingly, this claim for workers' compensation benefits is respectfully dismissed without prejudice to the refiling within the specified 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 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The Claimant filed a Form AR-C with the Commission on or about July 6, 2022.
3. More than six (6) months have passed since the Claimant filed the Form AR-C for a claim of workers' compensation benefits. However, since the filing of said claim, the Claimant has not requested a hearing or had any activity on the claim.
4. The Respondents filed a Motion to Dismiss and Incorporated Brief in Support with the Commission on March 6, 2023.
5. The Claimant does not object to her claim being dismissed without prejudice.
6. That the evidence preponderates that the dismissal of this claim without prejudice is warranted.
7. That the Respondents' motion to dismiss is hereby granted pursuant to Ark. Code Ann. §11-9-702 (Repl. 2012), and Commission Rule 099.13, without prejudice to the refiling of the claim within the applicable limitation period.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim for workers' compensation benefits. This claim is dismissed under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and Commission Rule 099.13, without

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prejudice to the refiling of this claim within the specified limitation period.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge