

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H104322

KRISTINA MCDUGAL,
EMPLOYEE

CLAIMANT

LAKESIDE PRIMARY SCHOOL,
EMPLOYER

RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOCIATION,
INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR
(TPA)

RESPONDENT

OPINION FILED MARCH 17, 2022

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

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

Respondents represented by the Honorable Jarrod S. Parrish, 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 16, 2022 in this claim for workers' compensation benefits, pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). The sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

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

No testimony was taken at the hearing.

The record consists of the hearing transcript of the March 16, 2022 and the documents contained therein, including Respondents' Hearing Exhibit Index. This exhibit includes eight (8) numbered pages and was marked as Respondents' Exhibit 1. Also, the entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

Background

Here, the Claimant filed a Form AR-C with the Commission on May 18, 2021. Per this document, the Claimant asserted her entitlement to only initial benefits in the form of medical expenses. The Claimant's alleged that she sustained a work-related injured on September 14, 2020. She briefly described the cause of injury and the part of body injured as being her nose after an altercation with a student.

On or about May 20, 2021, the Respondents filed a Form AR-2 with the Commission accepting this as a medical only claim.

Since the filing of the Form AR-C, the Claimant has failed to request a hearing on the merits before the Commission in her claim for workers' compensation benefits.

Therefore, on January 12, 2022, the Respondents filed with the Commission, a letter motion to dismiss this claim for workers' compensation benefits due to a lack of prosecution, with a copy to the Claimant.

On January 18, 2022 the Commission sent a notice to the Claimant informing her of the motion, with a deadline of February 8, 2022 for filing a written objection to the motion.

The Claimant contacted the Respondents' attorney on February 8, 2022. At that time, the Claimant indicated that she does not object to her claim being dismissed.

On February 2, 2022, the Commission sent a Notice of Hearing to the parties notifying them that a hearing was scheduled for March 16, 2022 on the Respondents' motion to dismiss.

Information received by the Commission from the United States Postal Service indicates that both of the notices sent by the Commission to the Claimant were delivered to her home and left with an individual.

Nevertheless, a hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. The Claimant waived her appearance at the hearing. However, the Respondents appeared through their attorney. Counsel indicated that the Claimant had contacted his law partner and indicated that she does not object to her claim being dismissed. Therefore, the Respondents' attorney essentially moved that the claim be dismissed due to a lack of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13.

Discussion

My review of the documentary evidence in this claim shows that more than six (6) months have passed after the filing of the Form AR-C. However, since this time, the Claimant has failed to make a request for a hearing with respect to her claim. In addition to this, the Claimant has notified the Respondents' attorney that she does not object to her claim being dismissed. Consequently, the evidence preponderates that the Claimant has abandoned her claim for workers' compensation benefits. 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 this claim should be granted pursuant to Ark. Code Ann. §11-9-702 (Repl. 2012) and Rule 099.13. This claim is hereby respectfully dismissed without prejudice, to the refiling of it 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 parties were given reasonable notice of the motion to dismiss and hearing on it.
3. The evidence preponderates that the Respondents' motion to dismiss for want of prosecution is well founded.
4. That the Respondents' motion to dismiss is hereby granted pursuant to Ark. Code Ann. §11-9-702 (Repl. 2012) and our Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, pursuant to Ark. Code Ann. §11-9-702 (Repl. 2012) and Commission Rule 099.13, this claim is hereby respectfully dismissed without prejudice, to the refiling of it within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge