

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H305052

BARBARA McGRAW,
EMPLOYEE

CLAIMANT

LONOKE MIDDLE SCHOOL,
EMPLOYER

RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOCIATION,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED APRIL 17, 2024

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

The Claimant, pro se, did not appear at the hearing.

The Respondents represented by the Honorable Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held on April 17, 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 (Repl. 2012), and Arkansas Workers' Compensation Commission Rule 099.13. No testimony was taken at the hearing.

The record consists of the transcript of the April 17, 2024, hearing and the documents held therein. Admitted into evidence was Commission's Exhibit 1 consisting of thirteen pages, which was marked accordingly, and the Respondents' Hearing Exhibit consisting of thirteen numbered pages was marked as Respondents' Exhibit 1.

Background

On October 13, 2023, the Claimant’s attorney filed with the Commission a claim for Arkansas workers’ compensation benefits by way of a Form AR-C. Per this document, the Claimant alleged that she sustained injuries to her left arm, left shoulder and other whole body, during and in the course and scope of her the respondent-employer, on August 7, 2023. The Claimant’s attorney requested both initial and additional workers’ compensation benefits. In fact, the attorney checked all the boxes for every conceivable benefit available under the law in connection with this claim.

On August 9, 2023, the Respondents filed a Form AR-2 with the Commission to controvert this claim. Specifically, the Respondents’ grounds for controverting the claim were: “DENIED – did not occur with the course and scope of employment.”

Since the filing of the Form AR-C, there has been no request for a hearing filed by the Claimant in this matter.

The Claimant’s attorney filed with the Commission a Motion to Withdraw from representing the Claimant in this matter on January 17, 2024. The Full Commission entered an order granting the Claimant’s attorney motion to withdraw from representing her in this matter on February 8, 2024. The Claimant filed a letter with the Commission on February 14, 2024, saying that she does not object to her attorney withdrawing from the claim.

Since this time, there has been no bona fide action whatsoever on the part of the Claimant to prosecute her claim for workers’ compensation benefits, or otherwise pursue a resolution in this matter.

As a result, on February 16, 2024, the Respondents filed with the Commission a letter request for dismissal of this claim for a lack of prosecution, with a copy of this pleading to the Claimant being deposited in the mail of the United States Postal Service.

The Commission sent a letter to the Claimant's last known address with the Commission on February 20, 2024, informing her of the Respondents' motion for dismissal. Per this correspondence, the Claimant was given a deadline of twenty days to file a written response with the Commission to the Respondents' motion. Said letter was sent via both first-class and certified mail.

Tracking information from the United States Postal Service shows that on February 24, 2024, the above-mentioned certified letter was delivered to the Claimant when she picked it up from the Lonoke Post Office. The Signature and Recipient section of this document shows that the Claimant signed for delivery of this correspondence. The proof of delivery receipt bears the Claimant's printed name and her signature. Moreover, the letter sent by first-class mail has not been returned to the Commission.

Yet, there was no response from the Claimant.

Therefore, pursuant to a Notice of Hearing dated March 12, 2024, the Commission notified the parties that a hearing was scheduled to address the Respondents' motion to dismiss this claim due to a lack of prosecution. Said dismissal hearing was scheduled for April 17, 2024, at 9:00 a.m., at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas.

The hearing notice was sent to the Claimant via both first-class and certified mail. Tracking information received from the United States Postal Service shows that this item was picked up by the Claimant on March 20, 2024, at the local Post Office in Lonoke. The proof of delivery receipt

bears the Claimant's printed name and her signature. Of note, the hearing notice sent to the Claimant via first-class mail has not been returned to the Commission.

Still, there has been no response from the Claimant.

Subsequently, a hearing was in fact conducted on the Respondents' motion for dismissal of this claim for a lack of prosecution as scheduled on April 17, 2024. The Claimant did not appear at the dismissal hearing, and she has not responded to the notices of this Commission. However, the Respondents appeared through their attorney and argued for dismissal of this claim without prejudice due to a lack of prosecution.

The Respondents pointed out that there is no record of a hearing ever being requested in this matter. As a result, the Respondents made the dismissal request. Therefore, the Respondents asked for dismissal of this claim, *without prejudice*.

The record before me proves that the Claimant has failed to prosecute her claim for workers' compensation benefits. The Claimant has not ever requested a hearing since the filing of her claim. She did not appear at the hearing to object to her claim being dismissed and she has not responded to the written notices of this Commission.

Under these circumstances, I am compelled to find that the evidence preponderates that the Claimant has abandoned her claim for workers' compensation benefits. Therefore, per Ark. Code Ann. §11-9-702 and Rule 099.13 of this Commission, I find that this claim should be and is hereby respectfully dismissed, *without prejudice* to the refile 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 Respondents filed with the Commission a motion for dismissal of this claim due to a lack of prosecution, for which a hearing was held.
3. The Claimant has not ever requested a hearing since the filing of her claim via the Form AR-C, and she has objected to her claim being dismissed. Hence, the evidence preponderates that the Claimant has failed to prosecute her claim for workers' compensation benefits.
4. Appropriate Notice of the dismissal hearing was attempted on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' motion to dismiss this claim for a lack of prosecution is hereby granted, *without prejudice*, per Ark. Code Ann. §11-9-702, and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed pursuant to Ark. Code Ann. 11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13, *without prejudice*, to the refiling of it, within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge