

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: F711872

JOHN MESHELL,
EMPLOYEE

CLAIMANT

DAVIDSON TRANSPORT, INC.,
EMPLOYER

RESPONDENT NO. 1

INS. CO. OF THE STATE OF PA.,
CARRIER/TPA

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY
TRUST FUND

RESPONDENT NO. 2

OPINION FILED SEPTEMBER 7, 2023

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

Claimant, pro se, appeared at the hearing.

Respondents No. 1 represented by the Honorable Carol L. Worley, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the Honorable Christy L. King, Attorney at Law, Little Rock, Arkansas. Ms. King waived her appearance at the hearing.

Statement of the Case

A hearing was held on August 30, 2023 in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), for a determination of whether the above-referenced case 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.

Appropriate Notice of this hearing was had on all parties to their last known address, in the manner set under the applicable law.

The record consists of the transcript of the August 30, 2023, hearing and the documents contained therein. Respondents No. 1 offered into evidence one exhibit (Respondents' Hearing Exhibit Index) consisting of twenty-seven pages, which was marked accordingly. The entire Commission's file was also made a part of the record. It is hereby incorporated herein by reference. These exhibits were entered into evidence without objection.

Mr. John Meshell, the Claimant, and his wife attended the hearing. The Claimant's mother-in-law also accompanied them.

Background

In the case at bar, the Claimant has been declared permanently and totally disabled due to his work-related accidental injury. Specifically, on November 7, 2007, the Claimant sustained disabling compensable injuries during a motor vehicle accident while working for the respondent-employer. His primary incapacitating injury was a traumatic brain injury. However, a formal claim for workers' compensation benefits was not filed until over twelve years later September 3, 2019, via a Form AR-C. At that time, the Claimant's attorney filed a claim for benefits with the Commission which shows the Claimant sustained injuries to his neck, head, brain, back, and right leg. His attorney checked off all the boxes for both initial and additional benefits.

Both Respondents No.1 and Respondents No. 2 accepted this claim as a compensable claim for permanent and total disability workers' compensation benefits. Respondents No.1 have met their statutory payments for permanent and total disability benefits. Beginning on January 13, 2013, the Trust Fund began making payments on these benefits and they continue to do so. Furthermore, there is no dispute surrounding the payment of these benefits currently. Hence, the Claimant remains permanently and totally disabled due to his November 2007 work-related accident. As a result, the Claimant also continues to receive ongoing medical treatment for his

compensable injuries, which is being paid by Respondents No.1. Moreover, there are no issues in dispute to litigate currently.

On March 16, 2020, the Claimant's attorney wrote a letter to the Commission to ask that he be allowed to withdraw from representing the Claimant in this matter. The Full Commission entered an order on May 20, 2020, granting the motion for the Claimant's attorney to withdraw as his counsel of record in this claim.

The Claimant wrote a letter to the Commission on March 24, 2020, stating that he did not wish to pursue a claim for additional medications because his attorney had withdrawn as his counsel in this matter.

Following the above correspondence, Respondents No.1 filed a motion to dismiss this claim with the Commission on May 29, 2020. A dismissal hearing was scheduled on the motion for July 22, 2020. The dismissal hearing was ultimately rescheduled for August 10, 2020. The file was then transferred to the Legal Advisors' Division for voluntary mediation. However, in April 2022, the claim was returned to the Commission's general files because attempts to schedule a mediation conference failed. The Claimant subsequently notified the respondent-carrier's attorney that he was not interested in settlement.

Since this time, there has been no action taken by the Claimant to resolve his claim, nor has he made a bona fide request for a hearing on the merits.

Subsequently, on June 26, 2023, Respondents No. 1 renewed their request for the claim to be dismissed. A hearing on Respondents No. 1's motion to dismiss was set for August 30, 2023. All parties were notified of the hearing in the appropriate manner prescribed under the law. The Trust Fund waived their appearance at the dismissal hearing, and they have indicated that they have no objection to the claim being dismissed.

Nevertheless, a hearing was in fact conducted on the motion as scheduled. The Claimant and his wife (who shares co-guardianship of the Claimant with his now disabled sister) appeared for the hearing. Counsel noted for her motion that the claim should be dismissed because all appropriate benefits are currently being paid and there are no issues in dispute at this time. The Claimant and his wife both agreed with the claim being dismissed.

The record before me proves that the Claimant is being paid all proper workers' compensation benefits under the provisions of the Arkansas Workers' Compensation Act. Currently, there are no issues in dispute to litigate or a request for a hearing on the merits. Under these circumstances, the Claimant agrees that his claim should be dismissed.

Based on all the foregoing, I am compelled to find that the evidence preponderates that this claim should be dismissed under Rule 099.13 of this Commission. Therefore, I further find that this claim should be and is hereby respectfully dismissed, without prejudice to the refile of it with the limitation period specified by law. As such, the issue of the dismissal of this claim under the provisions of Ark. Code Ann. §11-9-702 has been rendered moot and will not be addressed.

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. Respondents No.1 filed with the Commission, a motion for dismissal of this claim due to a lack of prosecution, for which a hearing was held.
3. There are no issues in dispute currently. Therefore, the Claimant agrees with his claim being dismissed. Also, the Trust Fund does not object to the claim being dismissed.
4. Appropriate Notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.

5. Respondents No. 1's motion to dismiss this claim is hereby granted, without prejudice, per Commission Rule 099.13, to the refiling of it within the limitation period specified by law. Consideration for this claim to be dismissed under Ark. Code Ann. §11-9-702 has been made moot and will not be addressed in this Opinion.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed pursuant to Arkansas Workers' Compensation Commission Rule 099.13, without prejudice, to the refiling of it, within the limitation period specified by law. The issue pertaining to dismissal of this claim under Ark. Code Ann. 11-9-702 has been rendered moot and will not be addressed herein.

IT IS SO ORDERED.

HON. CHANDRA L. BLACK
Administrative Law Judge