

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H001202

DOUGLAS W. MEIGGS, EMPLOYEE

CLAIMANT

CITY OF LITTLE ROCK, EMPLOYER

RESPONDENT

**CITY OF LITTLE ROCK /RISK
MANAGEMENT RESOURCES, CARRIER/TPA**

RESPONDENT

OPINION FILED JUNE 3, 2021

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant, Mr. Douglas W. Meiggs, *pro se*, failed to appear at the hearing.

Respondents were represented at the hearing by Mr. Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on May 21, 2021, 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 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 May 21, 2021, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated herein by reference. Respondents' exhibit packet was identified as Respondents' Exhibit #1 and consisted of the First Report of Injury, the Form AR-C, the Form AR-2, the Motion to Dismiss, the correspondence to Claimant regarding the Motion to Dismiss, and the Notice of Hearing. Respondents' Exhibit #1 was admitted into evidence.

DISCUSSION

Claimant alleged that on or about February 6, 2020, he sustained an injury to his abdomen while working for Respondent-Employer. On February 26, 2020, Claimant filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of February 6, 2020, and asserted his entitlement to medical expenses. In a letter accompanying the Form AR-C, Claimant described his cause of injury as follows:

On February 6, 2020, I was injured while working on a city unit. The repair involved a GPS removal and install. The old GPS device was high up and behind the dash on the driver side of this unit. To access the device required me to put myself in a very uncomfortable position. I started out crouched down leaning in with my right side of my body pressing down on the door sill, while twisting to my left to gain access to the device. This was not working so I rolled onto my back and slid further under the dash. My body was then arched across the door sill with my body wedged between the driver seat the A pillar and floor board up to the gas and brake pedals. This was still an uncomfortable position to be in. I performed the removal and install of the new device. I then found myself basically stuck to where there was not anything to grab to pull myself out of the position I put myself in. I then slid out as far as I could while still on my back. My shoulders were now in-between the bottom of the seat and A pillar with the steering column over my head. I had to twist my head to the left then pull my shoulders together and pull up and out. While in the process of doing this move I then felt a strong pain in my upper abdomen like I had pulled something. I tried to walk it off thinking it was just a cramp. Within 2-5 minutes I was doubled over with severe pain, I then walk (*sic*) into my Fleet supervisors office and inform (*sic*) him that I had hurt myself getting out of the unit I was working on. He then called for medical help.

I have not had any type of medical issues or injuries before this incident and have not any after. I have not been diagnosed with any health problems. I'm disputing the denial of the workers comp claim because I believe the injury was caused by the position I put myself in and what I had to do while exiting the unit. I should be entitled to any and all benefits from workers comp.

Subsequently, there was no action taken by Claimant to prosecute his claim after the filing of the Form AR-C on February 26, 2020.

On February 27, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission. The claim was denied; however, Respondents paid for Claimant's ambulance bill

and the Baptist Medical Center emergency room visit. Any and all additional medical treatment and other benefits were denied.

Therefore, on March 23, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute, along with a Certificate of Service to Claimant. On March 30, 2021, the Commission sent a Notice to Claimant advising him of Respondents' motion and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated April 20, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for May 21, 2021, at 10:00 a.m., at the Arkansas Workers' Compensation Commission, 324 S. Spring Street, Hearing Room "A", Little Rock, Arkansas. Still, there was no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents' Motion to Dismiss for Failure to Prosecute. Respondents appeared through their attorney; however, Claimant failed to appear at the hearing.

Counsel advised that the claim of an alleged abdomen injury was denied, as there was no evidence of an acute, work-related injury. Counsel further advised that since the filing of the Form AR-C on February 26, 2020, Claimant has failed to pursue his claim for workers' compensation benefits. Specifically, Claimant has failed to respond to the notices of the Commission and did not appear for the hearing. As such, Counsel requested that the claim be dismissed, without prejudice, pursuant to Ark. Code Ann. § 11-9-702, and our Rule 099.13.

A review of the evidence shows that Claimant has had sufficient time to pursue his claim for additional workers' compensation benefits. It has been more than one (1) year since Claimant

filed a Form AR-C in this matter, and to date, Claimant has not requested a *bona fide* hearing or otherwise attempted to prosecute his claim. Hence, Claimant has failed to timely prosecute his claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents' motion for the dismissal of this claim to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for additional benefits should be dismissed, without prejudice, to the refiling within the applicable time 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. Claimant alleged that on or about February 6, 2020, he sustained an injury to his abdomen while working for the Respondent-Employer.
3. On February 26, 2020, Claimant filed a Form AR-C seeking benefits for medical treatment in this matter.
4. Subsequently, on February 27, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying that Claimant suffered a compensable injury to his abdomen as a result of the February 6, 2020, incident.
5. More than one (1) year has passed since Claimant filed a Form AR-C with the Commission. However, since this time, Claimant has failed to make a *bona fide* request for a hearing or otherwise resolve his claim for workers' compensation benefits.
6. On March 23, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute.
7. Claimant has had ample opportunity to pursue this claim for additional workers' compensation benefits, but no action has been taken by Claimant in furtherance of his claim, as he has failed to timely prosecute this matter.

8. Respondents' Motion to Dismiss for Failure to Prosecute is well founded.
9. Respondents' Motion to Dismiss for Failure to Prosecute should be granted pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of the claim within the applicable time period.
10. Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of this claim within the applicable time period.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE