

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H008231

KEITH MONROE,
EMPLOYEE

CLAIMANT

ARKANSAS DEPARTMENT OF CORRECTION
(BENTON WORK RELEASE),
EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED OCTOBER 17, 2024

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

The Claimant represented by the Honorable Timothy J. Myers, Attorney at Law, Fayetteville, Arkansas. Mr. Myers waived his appearance at the hearing.

Respondents represented by the Honorable Charles H. McLemore, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on October 16, 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, 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.

No testimony was taken.

The record consists of the transcript of October 16, 2024, hearing and the documents held therein. Respondents' Exhibit 1 consists of twelve (12) numbered pages of pleadings, correspondence, and various other forms related to this claim.

Procedural History

On October 6, 2022, the Claimant's attorney filed with the Commission a claim for Arkansas workers' compensation benefits on behalf of the Claimant via a Form AR-C. Per this document, the Claimant alleged that he sustained injuries to his back and hip during the course and in the scope of his employment with the respondent-employer, October 7, 2020. The Claimant's attorney requested initial benefits in the form of temporary total disability compensation, permanent partial disability benefits, rehabilitation, and attorney's fees. He also requested additional benefits, including additional temporary total disability, additional temporary partial disability, additional permanent partial, additional medical expenses, rehabilitation, and an attorney's fee.

Per an email dated that same date, the Claimant's attorney requested that a hearing be scheduled in this matter. However, no further action was taken in this regard.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on November 10, 2020. Per this form, the Respondents accepted this claim to be compensable.

No hearing was scheduled. Instead, the Claimant requested and was granted a change of physician on March 2, 2023. The Claimant's attorney obtained a Change of Physician Order from the Commission for the Claimant to change from treating with Dr. Victor Vargas to start treating with Dr. Joel Smith.

Since this time, the Claimant has not attempted to pursue or otherwise resolve his claim. No subsequent bona fide request for a hearing has been made in the Claimant's case since October 6, 2022.

On September 24, 2024, the Respondents filed a *Respondents' Motion to Dismiss for Want of Prosecution*, with the Commission, along with a Certificate of Service to the Claimant's attorney.

The Commission sent a letter to the Claimant and his attorney on September 30, 2024, informing Claimant of the Respondents' motion, and a deadline of twenty (20) days, for filing a written response. Said letter was mailed to the Claimant by both first-class and certified mail. The letter sent by first-class mail has not been returned to the Commission.

The Claimant's attorney sent an email to the Commission on October 8, 2024, stating, "*We have no objection to the Motion to Dismiss without prejudice.*"

Pursuant to a Hearing Notice dated October 8, 2024, the Commission notified the parties that the matter had been set for a hearing on the Respondents' motion to dismiss. Said hearing was scheduled for October 16, 2024, at the Arkansas Workers' Compensation Commission in Little Rock, Arkansas.

The hearing was held as scheduled. The Claimant's attorney waived his appearance at the hearing, and the Claimant did not appear at the hearing. The Respondents' counsel argued that the Claimant has failed to prosecute his claim for workers' compensation benefits. He further noted that the Claimant has not taken any affirmative action to prosecute his claim in more than six (6) months. More specifically, Respondents' counsel noted that the Claimant has not taken any action to advance his claim since the filing of the Form AR-C, which was done more than two (2) years ago.

Therefore, the Respondents' attorney moved that this claim be dismissed pursuant to Ark. Code Ann. §11-9-702, and/or Commission Rule 099.13 with or without prejudice on this claim for both initial and additional workers' compensation benefits.

Adjudication

The statutory provisions and Arkansas Workers' Compensation Rule applicable in the Respondents' request for dismissal of this claim are outlined below:

Specifically, Ark. Code Ann. §11-9-702(a)(4):

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

Additionally, Ark. Code Ann. §11-9-702(d) provides:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

Commission Rule 099.13 reads:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

A review of the evidence shows that the Claimant has had ample time to pursue his claim for workers' compensation benefits, but he has failed to do so. Specifically, the Claimant has not requested a hearing or otherwise made any effort to prosecute his claim for workers' compensation benefits since the filing of the Form AR-C, over two years ago; and nor has he resisted the motion

for dismissal. In fact, the Claimant's attorney has notified the Commission in writing that he does not object to this claim being dismissed *without prejudice*.

Here, the evidence preponderates that the Claimant has failed to prosecute this claim for workers' compensation benefits. Moreover, I am convinced that the Claimant has abandoned this claim.

Therefore, after consideration of the evidence before me, I find that the Respondents' motion to dismiss for a lack of prosecution to be well taken. I thus find that pursuant to the provisions of Ark. Code Ann. §11-9-702, and Commission Rule 099.13, this claim for workers' compensation benefits should be dismissed *without prejudice* to the refiling within the limitation period specified under the Arkansas Workers' Compensation Act (the "Act").

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. The Respondents filed with the Commission a motion for dismissal of this claim, for which a hearing was held.
3. The Claimant has not requested a hearing since his attorney filed the Form AR-C, which was done two years ago. Hence, the evidence preponderates that the Claimant has failed to prosecute his claim for workers' compensation benefits based upon the relevant statutory provisions of Ark. Code Ann. 11-9-702, and Rule 099.13 of this Commission.
4. Appropriate Notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' motion to dismiss this claim for 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

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 dismissal is per Ark. Code Ann. §11-9-702, and Commission Rule 099.13, *without prejudice* to the refiling of this claim within the limitation period specified under the Act.

IT IS SO ORDERED.

Chandra L. Black
Administrative Law Judge