

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H007508

DONALD R. MULLINS, EMPLOYEE

CLAIMANT

RICELAND FOODS, INC., EMPLOYER

RESPONDENT

**SAFETY NATIONAL CASUALTY CORP./
GALLAGHER BASSETT SERVICES, INC.,
CARRIER/TPA**

RESPONDENT

OPINION FILED SEPTEMBER 30, 2021

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Pine Bluff, Jefferson County, Arkansas.

Claimant, Mr. Donald R. Mullins, *pro se*, failed to appear at the hearing.

Respondents were represented by Mr. Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on September 29, 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 September 29, 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 Respondents' Motion to Dismiss; a Brief in Support of Respondents' Motion to Dismiss; a notice to the Clerk of the Commission dated October 7, 2020, regarding representation of Claimant from Claimant's previous attorney; the Form AR-C;

the First Report of Injury; the Form AR-2; the May 10, 2021, Motion to Withdraw filed by Claimant’s counsel; the Correspondence from the Clerk of the Commission to Claimant regarding counsel’s Motion to Withdraw; the June 3, 2021, Order from the Full Commission granting counsel’s Motion to Withdraw; and the August 10, 2021, Notice of Hearing. Exhibit #1 was admitted into evidence.

DISCUSSION

Claimant alleged that he sustained an injury to his back and neck on September 18, 2020, while working for the Respondent-Employer. On October 7, 2020, Claimant’s counsel filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of September 18, 2020, and asserted his entitlement to workers’ compensation benefits. On the Form AR-C, Claimant’s cause of injury was described as: “Client was in ATV, and was hit by a company car by OD. He sustained injuries to his back, neck, and other whole body.” Subsequently, there was no action taken by Claimant to prosecute his claim after the filing of the Form AR-C on October 7, 2020.

On October 8, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission accepting the claim as medical only.

On May 10, 2021, Claimant’s previous attorney filed a Motion to Withdraw as Counsel. The Full Commission entered an Order granting the Motion on June 3, 2021.

On July 7, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute, along with a Certificate of Service to Claimant. On July 15, 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 August 10, 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 September 29, 2021, at 1:00 p.m., at the Federal Building (Post Office Building), Room 3611, 100 East 8th Street, Pine Bluff, Arkansas. United States Postal Service records indicated that the Hearing Notice, sent via First-Class Mail and Certified Mail to Claimant's address, was delivered on August 12, 2021, at 3:50 p.m., and a signature was obtained. 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 it had been more than eleven (11) months since Claimant filed a Form AR-C with the Commission, and since that time, Claimant had not sought any type of *bona fide* hearing before the Workers' Compensation Commission. 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 workers' compensation benefits. It has been more than eleven (11) months 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 he sustained an injury to his back and neck on September 18, 2020, while working for the Respondent-Employer.
3. On October 7, 2020, Claimant's counsel filed a Form AR-C with the Commission seeking initial and additional workers' compensation benefits in this matter.
4. Subsequently, on October 8, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission accepting the injury to the cervical/lumbar spine as a medical only claim.
5. On July 7, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute.
6. More than eleven (11) months have 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.
7. Claimant has had ample opportunity to pursue this claim for 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