

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H005553

NIKIE R. MUSADDIQ, EMPLOYEE

CLAIMANT

CITY OF LITTLE ROCK, EMPLOYER

RESPONDENT

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

RESPONDENT

OPINION FILED AUGUST 20, 2021

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

Claimant, Ms. Nikie Musaddiq, *pro se*, failed to appear at the hearing.

Respondents were represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 19, 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 (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 prescribed by law.

The record consists of the transcript of the August 19, 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 by reference. Respondents' exhibit packet was identified as Respondents' Exhibit #1 and consisted of the First Report of Injury; a March 29, 2019, Little Rock Police Department Report; the Form AR-N; the Form AR-C; the Form AR-2; the Respondents' Motion

MUSADDIQ – H005553

to Dismiss; the June 8, 2021, Correspondence to Claimant regarding Respondents' Motion; and the June 30, 2021, Notice of Hearing. Respondents' Exhibit #1 was admitted into evidence.

DISCUSSION

Claimant alleges that on March 25, 2019, she sustained an injury to her right ankle while working for the Respondent-Employer. On August 10, 2020, Claimant filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of March 25, 2019, and asserted her entitlement to workers' compensation benefits. On the Form AR-C, Claimant's cause of injury was described as: "I broke my right ankle in a fall leaving my residence from a lunch break while in training. It required emergency surgery due to the severity of the injury with a stay in the hospital. The surgeon advised the recovery time to full duty status may be (6-8) months. I was prescribed medication and was unable to drive. I have 14 screws and a plate and had to wear a boot and brace. I also had to have several months of physical therapy." Subsequently, there was no action taken by Claimant to prosecute her claim after the filing of the Form AR-C on August 10, 2020.

On August 12, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission. The claim was denied as the injury did not arise out of the course and scope of employment.

On June 3, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute, along with a Certificate of Service to Claimant. On June 8, 2021, the Commission sent a Notice to Claimant via First-Class Mail and Certified Mail to Claimant's address. 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 July 15, 2021, at 11:23 a.m., and a signature

MUSADDIQ – H005553

was obtained. However, there was no other response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated June 30, 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 August 6, 2021, at 1:00 p.m., at the Arkansas Workers' Compensation Commission, Hearing Room "A," Third Floor, 324 S. Spring Street, Little Rock, Arkansas. Due to a scheduling conflict, the hearing was rescheduled for August 19, 2021, at 1:00 p.m., at the Arkansas Workers' Compensation Commission in Hearing Room "A." 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 Claimant filed a Form AR-C in August of 2020, and that Respondents denied the claim in its entirety, as Claimant was injured outside the scope of her employment with Respondent-Employer. Since the filing of the Form AR-C, Claimant has not responded to inquiries or notices regarding her case, and she has 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 her claim for 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 her claim. Hence, Claimant has failed to timely prosecute her 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 refile 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 (Repl. 2012).

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Claimant alleged that on March 25, 2019, she sustained an injury to her right ankle while working for the Respondent-Employer.
3. On August 10, 2020, Claimant filed a Form AR-C with the Commission seeking workers' compensation benefits in this matter.
4. Subsequently, on August 12, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying the claim as there was no evidence that Claimant sustained an injury in the course and scope of her employment.
5. On June 3, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute.
6. 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 her 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 her claim, as she 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