

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: H402888

GUY NICHOLS,
EMPLOYEE

CLAIMANT

WAL-MART ASSOCIATES, INC.,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED MARCH 19, 2025

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

The Claimant, *pro se*, failed to appear for the dismissal hearing.

Respondents represented by the Honorable Michael C. Stiles, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held on March 12, 2025, in the above-referenced matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether this 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. Of significance, the Respondents have asked that this dismissal be granted specifically to include the statutory provisions for both initial and additional workers' compensation benefits.

Appropriate notice of this hearing was tried 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 March 12, 2025, hearing and the documents held therein. Commission's Exhibit 1 comprising of eighteen (18) pages, was introduced into evidence without objection, and was thus marked accordingly.

History

The procedural history of this claim includes the following:

On May 1, 2024, the Claimant's former attorney filed a Form AR-C with the Commission alleging that the Claimant sustained a compensable injury to his right shoulder while working for Walmart during and in the course of his employment on February 18, 2024. Per this document, the Claimant asserted his entitlement to both initial and additional workers' compensation benefits. Also on May 1, the Claimant's former attorney wrote a letter to the Commission asking the Respondents to state their position within fifteen (15) days.

The Respondents' claims specialist filed a Form AR-2, with the Commission on May 8, 2024, in response to the Form AR-C. At that time, the respondent-carrier's stated position was "Claim is compensable."

On July 26, 2024, the Claimant's attorney filed a Motion to Withdraw as counsel of record in this matter for the Claimant. Pursuant to an Order filed by the Full Commission on August 14, 2024, the Claimant's attorney was allowed to withdraw as counsel of record in this claim.

Subsequently, there was no action whatsoever taken on the part of the Claimant to prosecute his claim or pursue benefits. In fact, at no time has the Claimant ever requested a hearing in the claim.

Therefore, on January 7, 2025, the Respondents filed a *Motion to Dismiss Without Prejudice and Brief in Support of the Motion to Dismiss*, with the Commission, along with a certificate of service indicating that they served a copy of the foregoing pleading on the Claimant via the United States Postal Service.

My office sent a Notice to the Claimant on January 15, 2025, informing him of the Respondents' motion to dismiss, and a deadline of twenty (20) days for filing a written response.

This letter was sent via first-class and certified mail. Information received by the Commission from the United States Postal Service on January 30, 2025, confirms that they were unable to find any delivery information on this item in their records. However, the notice sent by first-class mail has not been returned to the Commission.

Next, pursuant to a Hearing Notice dated February 5, 2025, my office notified the parties that this claim had been set for a hearing on the Respondents' motion to dismiss. Said dismissal hearing was scheduled for March 12, 2025, 10:30 a.m., with the hearing being held at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas. This notice was sent via first-class mail and certified mail.

Information received from the Postal Service shows that this item was delivered to the Claimant's residence, and he signed for the Hearing Notice on February 8, 2025. The Recipient's Signature section bears the Claimant's printed name, along with his signature. Moreover, the notice sent via first-class mail has not been returned to the Commission.

Based on the foregoing, the evidence preponderates that the Claimant received notice of the dismissal hearing.

A hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant did not appear for the dismissal hearing. However, the Respondents appeared through their attorney.

The Respondents' counsel essentially noted that the Claimant has failed to timely prosecute his claim for workers' compensation benefits. As such, Counsel argued that this claim be dismissed *without* prejudice under the provisions of Ark. Code Ann. §11-9-702(a)(4) and (d), as well as Commission Rule 099.13. The Respondents' attorney also stated that the Claimant has been paid appropriate benefits in this claim. Counsel noted the Claimant has failed to request a

hearing in this matter since the filing of Form AR-C, which was done more than six (6) months ago. Therefore, the Respondents' attorney requested that the claim be dismissed *without prejudice* under the foregoing statutory provisions and Commission Rule.

Adjudication

Therefore, 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) states:

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.

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.

Additionally, 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 ever requested a hearing or otherwise made any effort to prosecute his claim for workers' compensation benefits since the filing of his claim more than six (6) months ago; and nor has he resisted the motion for dismissal of his workers' compensation claim despite having received notice of the hearing. Hence, the evidence preponderates that the Claimant has clearly failed to prosecute this claim. Furthermore, considering all the foregoing, I am convinced that the Claimant has abandoned his 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 Ark. Code Ann. §11-9-702(a)(4) and (d), along with Commission Rule 099.13, this claim for initial and additional workers' compensation benefits is hereby respectfully dismissed *without prejudice* to the re-filing of it within the limitation periods specified under the Arkansas Workers' Compensation Act (the "Act").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on 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. The Respondents filed with the Commission a motion for dismissal of this claim, for which a hearing was held.
3. Appropriate notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.
4. The evidence preponderates that the Respondents' motion to dismiss this claim due to a lack of prosecution is well founded, and should be hereby granted, *without prejudice*, under the provisions of Ark. Code Ann. §11-9-

702(a)(4) and (d), as well as Commission Rule 099.13, to the refiling of it within the limitation periods specified by law.

ORDER

Based upon the foregoing findings, I have no alternative but to dismiss this claim for workers' compensation benefits. This dismissal is made pursuant to the provisions of Ark. Code Ann. §11-9-702(a)(4) and (d), as well as Commission Rule 099.13, *without prejudice* to the refiling of this claim within the limitation periods specified under relevant law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge