

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H104991

MATT C. NOSLER, EMPLOYEE	CLAIMANT
GOODWILL INDUSTRIES OF ARKANSAS, INC., EMPLOYER	RESPONDENT
ATA WORKERS' COMPENSATION SI TRUST, INSURANCE CARRIER	RESPONDENT
RISK MANAGEMENT RESOURCES, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED AUGUST 8, 2023

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

Claimant, pro se, appeared for the hearing.

Respondents represented by the Honorable Jarrod S. Parrish, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held on July 25, 2023, in the present matter for a determination of 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.

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 July 25, 2023, hearing and the documents contained therein. The Respondents' Hearing Exhibit Index consists of seven numbered pages and a cover sheet. These were marked as Respondents' Exhibit 1.

Also, the entire Commission's file was made a part of the record. It is hereby incorporated herein by reference.

Procedural History

On June 15, 2021, the Claimant filed with the Commission a claim for Arkansas workers' compensation benefits by way of a Form AR-C. Specifically, the Claimant sustained an admittedly compensable injury to his left ankle, on May 18, 2020, in the form of "a fractured talus and torn ligaments." The Claimant checked the box for additional workers' compensation benefits solely in the form of additional permanent partial disability.

The respondent-insurance-carrier filed an Amended Form AR-2 with the Commission on January 19, 2023, accepting this as a compensable injury to the Claimant's left ankle, in the form of a fracture. Of note, the record shows that the Respondents initially accepted this as a medical only claim in June 2021.

Since the filing of the Form AR-C, there has been no appreciable action on the part of the Claimant to prosecute his claim for workers' compensation benefits, or otherwise pursue or bring his claim to a resolution.

On May 9, 2023, the Respondents' Claims Specialist wrote a letter/motion to the Clerk of the Commission asking that the claim be dismissed for a lack of prosecution on the part of the Claimant. The Respondents filed said motion with the Commission on May 10, 2023.

The Commission sent a letter-notice to the Claimant's last known address on May 11, 2023. Per this correspondence, the Claimant was given a deadline of twenty days, for filing a written response to the Respondents' motion. The notice was sent to the Claimant via first-class and certified mail.

On May 31, 2023, the Claimant wrote a letter to the Commission. Specifically, the Claimant wrote: “I have not requested to prosecute or pursue my claim due to still being under Dr. Martin’s care. My recovery time is 12 months. I am currently doing physical therapy as well. I do not wish for my case to be dismissed as I will need an additional surgery in the future and additional treatment according to Dr. Martin.”

Pursuant to a Hearing Notice as of June 14, 2023, the Commission notified the parties that a hearing was scheduled to address the Respondents’ motion to dismiss this claim due to a lack of prosecution. Said hearing was scheduled for July 25, 2023, at 10:00 a.m., at the Arkansas Workers’ Compensation Commission, in Little Rock, Arkansas.

The documentary evidence of record shows that the Commission mailed the Notice of Hearing to the Claimant via first-class and certified mail.

However, on the day of the hearing, the United States Postal Service informed the Commission that they were unable to deliver the Hearing Notice to the Claimant, which was sent via certified mail. As such, this parcel of mail was returned to the Commission marked “Return to Sender, Unclaimed, Unable to forward.” Of significance, the notice sent to the Claimant via first class-mail has not been returned to the Commission to date.

Subsequently, a hearing was in fact conducted on the Respondents’ motion for dismissal as scheduled. The Claimant and his wife appeared for the hearing. The Respondents appeared through their attorney.

Counsel noted that although the Claimant wrote to the Commission saying that he does not wish to have his claim dismissed, the Claimant has not identified any issue that requires litigation or participation by an Administrative Law Judge/ALJ, and there has been no request for a hearing. Counsel further pointed out that the Claimant has not requested a hearing on his claim for workers’

compensation benefits and the claim is over two years in the making since the Form AR-C was filed, and he has failed to prosecute the case. Therefore, counsel moved that this claim be dismissed under Ark. Code Ann. §11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13.

The Claimant said that he had spoken with someone from the Legal Advisors Division and now had some clarity as to what the hearing was about. He specifically stated that since the issue does not pertain to his need for future treatment, he does not object to his claim being dismissed.

The record before me proves that the Claimant has not requested a hearing since the filing of his claim for workers' compensation benefits. The Claimant withdrew his prior objection to the dismissal of his claim at the time of the hearing. After discussing his claim with a legal advisor, the Claimant stated that he does not object to his case being dismissed.

Accordingly, after having taken into full consideration the entire record before me, I find that this claim should be and is hereby dismissed, without prejudice to the refile of it with the limitation period specified by law. This dismissal is hereby made under the provisions of Ark. Code Ann. §11-9-702 and Rule 099.13 of this Commission.

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 authority of this claim.
2. The Respondents filed with the Commission, letter-motion to dismiss this claim, for which a dismissal hearing was held.
3. The evidence preponderates that the Claimant failed to timely prosecute his claim for workers' compensation benefits. Most notably, the Claimant does not object to his case being dismissed.

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 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

Per the findings of fact and conclusions of law set forth above, this claim is hereby dismissed pursuant to Ark. Code Ann. §11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13, without prejudice to the refiling of it, within the limitation period specified by law.

IT IS SO ORDERED.

HON. CHANDRA L. BLACK
Administrative Law Judge